

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., (CAUSE NO. 2:21-CV-463-JRG
)
Plaintiff, ()
vs. ()
SAMSUNG ELECTRONICS CO., LTD., ()
et al., () MARSHALL, TEXAS
() APRIL 14, 2023
Defendants. () 9:00 A.M.

VOLUME 1

TRIAL ON THE MERITS

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE
and a jury

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1 THE COURT: Thank you. Be seated, please.

2 Good morning, ladies and gentlemen. Thank you for being
3 here.

4 My name is Rodney Gilstrap, and I am the chief United
5 States district judge for the U.S. District Court for the
6 Eastern District of Texas. I have lived in Marshall since
7 1981. I practiced law in and around this community for 30
8 years before I was appointed to the bench here in 2011.

9 They say that confession is good for the soul so I'll
10 start with a confession. I was not born in Texas, but I got
11 here as quick as I could. I came to Texas at the ripe old age
12 of 18 to enroll as a freshman at Baylor University in Waco. I
13 finished my undergraduate degree there, and then I attended
14 and graduated from Baylor law school.

15 I am married. My wife and I had two grown children. We
16 lost one about six months ago. We have several wonderful
17 grandchildren. My wife owns and operates a retail floral
18 business here in Marshall, and she's done that for more than
19 the last 15 years.

20 Now, I tell you all those things about myself because in
21 a few minutes I'm going to ask each of you to give me the same
22 type information about yourselves, and I think you're entitled
23 to know as much about me as I'm about to find out from each of
24 you-all.

25 We are about to engage in the selection of a jury in a

1 civil case involving allegations of patent infringement. But
2 before we go any further, if you would indulge me for a
3 minute, I'd like to briefly review with you how we came to
4 have our American civil jury trial system. I think that's
5 important.

6 If you go back in ancient history and if you begin with
7 the first five books of the Old Testament, the Pentateuch, you
8 will find that the ancient Hebrew nation impaneled juries to
9 decide issues of property ownership and property value.

10 The ancient Greeks began using a jury system about 1500
11 BC. And the ancient Romans, like they did many things,
12 borrowed and copied the jury system from the Greeks, and it
13 was the Romans that brought the jury system across the English
14 channel to what we now know as Great Britain when they
15 conquered that island in the fourth century AD.

16 And having brought the jury system to England, that
17 system became established and flourished and was in place for
18 800 years, until the 12th century when a rather tyrannical
19 king came to the throne of England named King John. And King
20 John became embroiled in multiple disputes with his nobles and
21 his population, and nearly led that country to the brink of
22 civil war.

23 But those disputes were resolved and civil war was
24 avoided. One of the primary disputes between King John and
25 his subjects was his efforts to curtail and do away with the

1 right to trial by jury. But as I say, civil war was avoided,
2 those disputes were resolved, and they were settled by way of
3 a written document that the king and his nobles all executed
4 at a place in England called Runnymede. That document you may
5 have heard of and studied in history is called the Magna
6 Carta.

7 And so you can see, ladies and gentlemen, that the
8 concept of the jury trial came with our British forefathers
9 who crossed the Atlantic and settled this country in North
10 America and became British subjects in English North America.

11 And the jury system flourished in colonial America under
12 the rule of the British for over a hundred years until another
13 rather tyrannical king came to the throne of the Great
14 Britain, and this time his name was King George the III. And
15 like King John, King George the III became embroiled in many,
16 many controversies with his subjects, primarily his British
17 subjects living here in North America.

18 And one of the issues that became a problem between the
19 king and his North American subjects was his efforts to
20 curtail the right to trial by jury.

21 In fact, ladies and gentlemen, when Thomas Jefferson sat
22 down and wrote the Declaration of Independence which was a
23 letter to the king explaining all the disputes and issues that
24 existed and that led his colonists to reach the ultimate
25 conclusion that they had no alternative but to separate from

1 Great Britain and form our own independent nation, the king's
2 efforts to curtail the right to trial by jury are expressly
3 called out in the Declaration of Independence by Thomas
4 Jefferson as one of those problems leading up to the
5 determination that we would have to become our own independent
6 country.

7 And as you know, we did revolt from Great Britain, we did
8 win the Revolutionary War, and we did become our own
9 independent nation. And shortly, thereafter, we developed
10 what is the supreme law of the land, our governing document,
11 the Constitution of the United States.

12 And shortly after its ratification, ten additional
13 amendments or ten amendments to the Constitution were enacted.
14 You know these ten amendments. You've heard them throughout
15 your time in school as the Bill of Rights. And if you look at
16 the Bill of Rights, the Seventh Amendment to the U.S.
17 Constitution guarantees the right to trial by jury in a civil
18 case.

19 And the ten amendments that make up the Bill of Rights
20 were all ratified in 1791, ladies and gentlemen. So since
21 1791, every American citizen has a guaranteed -- a
22 constitutionally-guaranteed right to submit their civil
23 disputes to resolution through a trial by jury.

24 I often tell citizens like yourselves who appear for jury
25 duty this morning that, by being here, you are doing a very

1 real part to uphold our Constitution, and particularly the
2 Seventh Amendment to our Constitution guaranteeing the right
3 to trial by jury in a civil case.

4 I also tell citizens who appear for jury duty as you have
5 this morning that, in my personal opinion, jury service is the
6 second highest form of public service any American can render.
7 In my personal view, the highest form of public service that
8 any American can render to our country are those young men and
9 women that serve in our armed forces.

10 Now, I want you to understand, ladies and gentlemen, that
11 as a part of this jury selection process, the lawyers here
12 representing the parties are going to ask you various
13 questions along the way. I want you to understand that they
14 are not asking questions that are intended to pry into your
15 personal affairs or to go beyond what is necessary to help us
16 secure a fair and an impartial jury to hear the evidence in
17 this case.

18 But please understand, these are very experienced trial
19 lawyers. They understand the rules of the Court. I do not
20 expect them to go beyond what's necessary to question you
21 about your ability to be fair and impartial if you're selected
22 to serve on this jury.

23 Now, I often tell jury panels this, and I'm going to make
24 this clear to you this morning, it is possible that in the
25 process you may be asked a question about your personal

1 background that you find so private and so personal, that
2 you're not comfortable answering it in front of everybody else
3 on the jury panel.

4 Now, that doesn't happen very often, it's a rarity, but
5 it could come up. If at any place along the way this morning
6 you are asked a question that you feel is so personal, you do
7 not feel comfortable answering it in front of everybody else,
8 you always have the option to say, in response to that
9 question, I'd like to discuss that with Judge Gilstrap. And
10 if that's your answer, I'll provide an opportunity where you
11 can answer that outside of the presence of everyone else on
12 the panel.

13 But, ladies and gentlemen, I can count on one hand the
14 times that's come up, and I've been on the bench soon to be
15 over 12 years. So it's a rarity, but I want you to understand
16 that option is out there if it should arise this morning.

17 Now, the trial in this case is going to begin today after
18 the jury's selected, and I anticipate that it will go through
19 all of next week. My best guess is that we'll end this trial
20 and complete the process a week from today on next Friday.
21 Today is the 14th of April, and so in that case we'd be
22 talking about from now through the 21st of April.

23 Now, if there are any of you on the panel that would have
24 a very serious problem with being present through today and
25 all of next week, I need to know about it. And when I say

1 serious problem, I'm not talking about merely it's
2 inconvenient to serve on the jury, because, ladies and
3 gentlemen, by its nature jury service is inconvenient. That's
4 why it's valuable public service.

5 But let me give you an example. If you have a surgical
6 procedure scheduled for yourself or an immediate family member
7 who is dependent upon you during the next week, that's a
8 reason that I should hear about. If you have pre-paid,
9 non-refundable tickets to fly across the Atlantic Ocean and
10 can't get your money back, that's something I need to know
11 about. But mere inconvenience is not a reason.

12 But if there's anybody that feels like there is in your
13 particular circumstances a serious problem with you being able
14 to be available throughout the trial as I've discussed it, I
15 need you to raise your hands and let me make a note of it at
16 this time. Okay. I don't see anybody in the jury box.

17 And, sir, I can't see your number.

18 THE PANEL MEMBER: No. 20.

19 THE COURT: 20? Thank you, sir.

20 And I guess, ma'am, you're number 21?

21 THE PANEL MEMBER: Yes, sir.

22 THE COURT: Okay. Let me make a note of that.

23 And 23. Thank you, sir.

24 Anybody else? 20, 21, and 23.

25 All right. Thank you, ladies and gentlemen.

1 Now, at this time I'm going to call for announcements on
2 the record in the case of Netlist, Inc., versus Samsung
3 Electronics Company, Ltd., Samsung Electronics America, Inc.,
4 and Samsung Semiconductor, Inc. This is Civil Case No.
5 2:21-CV-463.

6 And, Counsel, as you give your announcements for the
7 members of the panel and the Court, please identify yourselves
8 the members of your trial team, and any corporate
9 representatives that you have with you.

10 What says the Plaintiff?

11 MR. BAXTER: Thank you, Your Honor. We are ready.

12 Can I approach the podium for just a second, Your Honor?

13 THE COURT: Please do, Mr. Baxter.

14 MR. BAXTER: Your Honor, Sam Baxter from McKool
15 Smith. And we're ready to proceed, Your Honor.

16 With me today, I have my law partner, Dr. Kevin Burgess,
17 who is right here at the counsel table, and my other law
18 partner, Ms. Jennifer Truelove. And trying the case with us
19 today will be my friend, Mr. Jason Sheasby, and his partner,
20 Lisa Glasser.

21 And this is our corporate rep, Mr. Scott Milton. He's
22 the vice president of engineering for Netlist, Your Honor.

23 And we're ready.

24 THE COURT: All right. Thank you, Counsel.

25 What says the Defendants?

1 MR. CORDELL: Good morning, Your Honor. Ruffin
2 Cordell from Fish & Richardson on behalf of Samsung. And
3 trying the case with me this morning is my partner, Michael
4 McKeon, and my colleague, Melissa Smith.

5 And our corporate representative from Samsung is Mr.
6 Joseph Calandra.

7 And we're ready to proceed, Your Honor.

8 THE COURT: All right. Thank you.

9 Now, ladies and gentlemen, as I've told you, this is a
10 patent case arising under the patent laws of the United
11 States. And what the Plaintiff Netlist is claiming is that
12 certain of its patents have been infringed by the Samsung
13 Defendants, and Netlist is seeking money damages because of
14 this alleged infringement. And the Defendants Samsung, they
15 deny that they infringe any of the Plaintiff's patents and
16 they contend that certain of the Plaintiff's patents are
17 invalid.

18 Now, what I've just told you is a very shorthand,
19 thumbnail sketch of what this case is about. I know you have
20 all seen this morning the video prepared by the Federal
21 Judicial Center about patent infringement and patent trials.
22 And having seen that, you know more about what the evidence is
23 going to be in this case than most people do who appear for
24 jury duty.

25 As I mentioned, the lawyers from both sides will have an

1 opportunity in a few minutes to question the members of the
2 panel to obtain relevant information, to exercise their
3 rights, and help the Court secure a fair and an impartial jury
4 to hear the evidence in this case.

5 I want to make this clear, ladies and gentlemen. As to
6 any of the questions you're going to be asked this morning,
7 there are no wrong answers. As long as the answers you give
8 are full, complete, and truthful, there are no wrong answers.

9 And as I mentioned, the lawyers are not here to pry into
10 your personal affairs. I don't expect that's going to happen.
11 If it should, I won't hesitate to jump in and stop it. But I
12 don't expect that at all.

13 And you should understand that the lawyers are entitled
14 under our system to ask the questions that they will ask to
15 secure relevant information. Again, the goal of this process
16 is to secure a fair and an impartial jury to hear the evidence
17 in this case.

18 Before the lawyers begin with any questions they have,
19 there is one thing I want to cover with you and call your
20 attention to because some of the lawyers may ask you about
21 your ability to apply this if you're selected to serve on this
22 jury, and that's what we call the burden of proof.

23 In a patent case, the jury may be called upon to apply
24 two different burdens of proof. There's a burden of proof
25 known as the preponderance of the evidence. I'll say that

1 again--the preponderance of the evidence. And there's a
2 second burden of proof known as clear and convincing
3 evidence--clear and convincing evidence.

4 So when you're responding to any possible questions from
5 the lawyers about the burden of proof, I need to instruct you
6 that when a party has the burden of proof by -- on any claim
7 or defense by a preponderance of the evidence, that means that
8 you, the jury, must be persuaded by the credible and
9 believable evidence that that claim or defense is more
10 probably true than not true. Let me say that again--more
11 probably true than not true. This is sometimes talked about
12 as being the greater weight and degree of credible testimony.

13 Let me give you what I hope will be a helpful example.
14 In front of me is our court reporter, Mr. McRoberts. In front
15 of him, you see a statue, the Lady of Justice. She's
16 blindfolded. In her right hand lowered at her right side is
17 the sword of justice. In her left hand raised above her are
18 the scales of justice. Those scales are balanced and equal
19 and in exactly the same position, and that's where these
20 parties need to start out in this trial.

21 But over the course of the trial, the Plaintiff is going
22 to put on their evidence, and when they do, think about them
23 putting their evidence on one side of those scales. And then
24 the Defendants are going to get an opportunity to put on their
25 evidence and think about that evidence as going on the other

1 side of those scales.

2 And when all the evidence is in, if a party has the
3 burden of proof on any issue by a preponderance of the
4 evidence, and looking at those scales with all the evidence on
5 them, if they should tip in favor of the party who has that
6 burden of proof by a preponderance of the evidence, even if
7 they tip ever so slightly, then that party has met the burden
8 of proof of the preponderance of the evidence, more likely
9 true than not true.

10 However, ladies and gentlemen, with regard to this second
11 burden of proof, clear and convincing evidence, that means
12 that you, the jury, must be persuaded by the evidence and
13 arrive at an abiding conviction that the truth of the party's
14 factual contentions are highly probable. Let me say that
15 again--an abiding conviction that the truth of the party's
16 factual contentions are highly probable. This second burden
17 of proof, the clear and convincing burden of proof, is a
18 higher burden of proof than the first one I mentioned, the
19 preponderance of the evidence.

20 Let me go back to the same example. The parties start
21 out equal. The scales of justice start out equal. The
22 Plaintiff puts on all their evidence which goes on one side of
23 those scales, the Defendant puts on all their evidence that
24 goes on the other side of those scales, and when all the
25 evidence is in, if the party has the burden of proof on any

1 issue by clear and convincing evidence, then those scales must
2 tip in that party's favor and they must definitely tip. It's
3 not adequate that they tip ever so slightly. But if they
4 definitely tip in favor of that party, then that party has met
5 this second burden of proof, the clear and convincing evidence
6 standard.

7 Now, there is a third burden of proof, ladies and
8 gentlemen, that has absolutely no application in this case
9 whatsoever. You've probably all heard about it in the media
10 and the television and movies, and that's called beyond a
11 reasonable doubt. Beyond a reasonable doubt is the burden of
12 proof applied in a criminal case. And as I say, it has
13 absolutely no application whatsoever in a civil case such as
14 this.

15 You should understand that the clear and convincing
16 evidence standard is higher than the preponderance of the
17 evidence standard, but it is not as high as beyond a
18 reasonable doubt. And you should not confuse clear and
19 convincing evidence with beyond a reasonable doubt.

20 Now, I give you these instructions on these two burdens
21 of proof that will be applied in this trial because it's
22 possible that one or more of the lawyers may ask you about
23 your ability to apply those standards to the evidence if
24 you're selected to serve on this jury.

25 Now, we've reached the point where I'm about to find out

1 from each of you the same kind of information I told you about
2 myself when we started. Let me explain to you how we're going
3 to do this.

4 We have two court security officers in the room. They
5 each have a handheld microphone. We are going to begin with
6 the first member of our panel, Mrs. Snelgrove. And the
7 Courtroom Deputy is going to bring you a handheld microphone.
8 When you get that microphone, if you'll take it, stand up, use
9 it, and then answer those nine questions.

10 Just a minute, ma'am. I'm not quite through.

11 Please be sure you hold it up here. You don't know how
12 many people hold it at their waist. There are a lot of people
13 here. I want everybody to hold the microphone close so that
14 we'll get the benefit of it.

15 And then when you've finished, ma'am, if you'll pass the
16 microphone to Panel Member No. 2, he'll stand and answer those
17 same nine questions on the monitors and you have printed
18 copies of. And we'll go numerically from 1 to 2 to 3 through
19 every member of the panel.

20 And one other thing, ladies and gentlemen. After you've
21 given me all this information, we'll reach a point later this
22 morning where the lawyers will go to the podium and ask
23 specific questions, and they may ask specific questions of
24 individual members of the panel. If they do, don't answer it
25 as soon as you hear the question. Wait until the Court

1 Security Officer brings you the handheld microphone, stand up,
2 hold it close, and then answer the question.

3 We'll do it the same way for any specific questions that
4 follow as we will for these nine standard questions that
5 you're about to answer.

6 So with that, Mrs. Snelgrove, if you'll stand and give us
7 your answer to those nine questions, please.

8 THE PANEL MEMBER: Good morning. Hello. My name is
9 Christia Snelgrove, and I live in Gilmer, Texas. I have two
10 grown children and two grandkids, young.

11 My place of employment is Pittsburg ISD, and I've worked
12 there 10 months. Prior to that, I worked at Titus County
13 Memorial Hospital for 16-and-a-half years being an OR
14 attendant, but my -- where I work now is doing custodial work
15 at the primary school.

16 I graduated from high school in 1995 from Gilmer, Texas.

17 My spouse's name is Gary Snelgrove. His place of
18 employment is East Texas Bridge in Longview, Texas, and he's
19 been there 15-and-a-half years. And he is a job
20 superintendent.

21 And I do have prior jury services in civil court in this
22 same courthouse.

23 THE COURT: All right. Thank you, ma'am.

24 If you'll hand that to Panel Member No. 2, Mr. Pomeroy.

25 THE PANEL MEMBER: My name is James Pomeroy. Good

1 morning, everybody. I have three grown children.

2 I do inspection work for a major gas company. I work --
3 my employer is BWS Services. I've worked for them one year
4 now. Prior to that, I've been in the inspection business for
5 10 years. I was a welder before that.

6 I have a GED. I never finished high school.

7 My wife's name is Barbara Pomeroy. She's a homemaker,
8 and she's done that pretty much all her life that we've been
9 together.

10 THE COURT: Any prior jury service?

11 THE PANEL MEMBER: Back in the '70s, I believe, but
12 I couldn't tell you whether it was civil or criminal.

13 THE COURT: All right. That's fine.

14 THE PANEL MEMBER: It's been a long time ago.

15 THE COURT: Thank you very much. If you'll hand
16 that to Panel Member No. 3, Ms. Kelso.

17 THE PANEL MEMBER: Good morning. My name is Denise
18 Kelso. I live in Longview, Texas. I have two grown children
19 one who's in the service.

20 I work at Christus Good Shepherd. I've been there for
21 nine years, and I'm the senior staffing office assistant,
22 which means if the nurses call in or we're short-staffed, I
23 have to find replacements for them.

24 I have -- I graduated from Austin High School, and I'm
25 not married anymore.

1 And prior jury service, I think it was a civil case for
2 traffic infringement in Lona Vista, Texas.

3 THE COURT: Thank you very much, Ms. Kelso.

4 Next is No. 4, Mr. Stewart?

5 THE PANEL MEMBER: Bill or William Stewart. I'm
6 from Jefferson, Texas.

7 I'm recently retired from the restaurant business where I
8 was -- worked with my wife who worked with me for 38 years. I
9 was a chef in charge of things in the back. My wife did the
10 front. Some college.

11 My wife's name is Sharon. And we've lived in Jefferson
12 for 38 years.

13 I've had one prior civil jury service.

14 THE COURT: And where was that and what kind of
15 case?

16 THE PANEL MEMBER: In Marion County, and that would
17 have been, I guess, around 2010.

18 THE COURT: All right. Thank you, Mr. Stewart.

19 Next is No. 5, Mr. Henry.

20 THE PANEL MEMBER: Good morning. My name is Bernard
21 Henry, Jr. I have four children, three adults -- three of
22 them are adults, one 13-year-old.

23 I'm retired Air Force. I did 21 years. I have graduated
24 high school in '94. I have some college.

25 My spouse's name is Trisha Henry. She's an RN. She

1 works for the VA Hospital. She's been there 11 years.

2 And I have no prior jury services.

3 THE COURT: Thank you, sir.

4 Next is No. 6, Mr. Bounds.

5 THE PANEL MEMBER: My name is George Bounds. I've
6 got one grown child, two grandchildren.

7 I work for Thru Tubing Solutions, which is oil field. I
8 perforate oil and gas wells. Been there five years. Before
9 that, I retired from TxDOT. High school graduate.

10 My spouse's name is Karen, and she's a homemaker. Been
11 that way over 40 years.

12 And I did a civil jury duty.

13 THE COURT: What did you do for TxDOT, Mr. Bounds?

14 THE PANEL MEMBER: I was heavy equipment operator.
15 When I retired, I was a supervisor.

16 THE COURT: Thank you.

17 No. 7 is next, Mr. Jester.

18 THE PANEL MEMBER: My name is Hugh Jester. I live
19 in Atlanta, Texas. We have two grown -- adult grown children.

20 I work for Graphic Packaging Paper Mill that was
21 International Paper Company until about five years ago.

22 THE COURT: Could you hold that microphone a little
23 closer? Thank you.

24 THE PANEL MEMBER: I worked 40 years there. I
25 graduated high school at McCloud High School in 1981.

1 My wife's name is Lisa. She's been a homemaker for 39
2 years.

3 I had one prior criminal case in Cass County.

4 THE COURT: Thank you very much, sir.

5 Next is No. 8, Mr. Simpson.

6 THE PANEL MEMBER: Hello. My name is Kenton
7 Simpson. I've lived in Longview in Texas for my whole life,
8 52 years. I have three adult children and a grandchild.

9 I work for Ideal Computers Supreme Plastics, and
10 currently work for Hallsville Independent School District as a
11 computer technician and database administrator for 23 years.
12 I have an Associate's of Science, a couple of years of
13 university.

14 My spouse's name is Kelly Simpson, and she is not
15 employed. And she stopped working a couple of years ago to
16 take care of the kids.

17 And I have no prior jury service.

18 THE COURT: All right, sir. Thank you very much.
19 If you'll hand that to Panel Member No. 9.

20 THE PANEL MEMBER: Good morning. My name is Jay
21 Wichlacz. I've been living in Gilmer for the last six years.
22 Like you, Your Honor, I came to Texas as soon as I could. I
23 have one child, a nine-year-old son. He's awesome.

24 Right now I'm a diesel technician working for Stewart &
25 Stevenson. And prior to that, I was in the United States

1 Army. I've been there about six years.

2 Education, I have high school graduate, and then I have
3 college classes that I've been taking.

4 My wife's name is Amber Wichlacz. She's a stay-at-home
5 mom, and she helps us -- I build furniture on the side.
6 That's my personal business.

7 THE COURT: Any prior jury duty?

8 THE PANEL MEMBER: This is my first time.

9 THE COURT: All right.

10 THE PANEL MEMBER: Thank you.

11 THE COURT: Thank you, sir.

12 No. 10 is next.

13 THE PANEL MEMBER: Good morning. My name is Jaffet
14 Robles. No children. Place of my employment is TexMex
15 Construction. I've been there for seven years. Education,
16 high school was the extent of my indoctrination, pardon me,
17 education.

18 No -- no spouse, and no prior jury service.

19 THE COURT: Thank you very much, sir.

20 Next is No. 11, Mr. Fuller?

21 THE PANEL MEMBER: My name is James Fuller. I'm
22 from Longview, Texas. I have two grown children.

23 Place of employment is Lowe's. I've been there 19 years.

24 No spouse. High school diploma. Never served on a jury.

25 THE COURT: All right. No. 12 is next.

1 THE PANEL MEMBER: Good morning. My name is Richard
2 Storey. Live in Queen City. Five children, five
3 grandchildren.

4 Place of employment is Cooper Tire, been there 21 years.
5 My education is a McCloud High School graduate.

6 Spouse's name is Charlotte Storey. She's a nurse.
7 Actually she works here in Marshall at the jail. She's a
8 nurse at the jail.

9 I have prior jury. It was civil, two years ago, right
10 here in this courtroom.

11 THE COURT: All right, sir. Thank you very much.

12 Next is No. 13, Mrs. Griffin.

13 THE PANEL MEMBER: My name is Joanna Griffin, and I
14 live in Naples, Texas. We have four children and 10
15 grandchildren.

16 I work for Morris County Title Company in Daingerfield
17 doing land searches. I've worked there about 20 years.
18 Graduated from a college degree, a BA degree.

19 My husband's name is Jimmy Griffin. He is a physician at
20 East Texas Clinic in Naples, and he's worked there for 40
21 years.

22 And my prior jury duty was the grand jury in Tyler.

23 THE COURT: All right. Thank you, ma'am.

24 Next is Mrs. Jordan, No. 14.

25 THE PANEL MEMBER: Good morning. My name is Shannon

1 Jordan. I live in Gilmer, Texas. I have five adult children,
2 three grandchildren.

3 My place of employment, I work for the state of Texas at
4 the license -- do driver's license. Worked there about
5 two-and-a-half years. I graduated high school, have some
6 college.

7 My spouse's name is Mark Jordan. He works for oil field
8 services, RCW Energy Services. He is asset manager. He's
9 been there probably eight, nine years.

10 And I've never served on a jury.

11 THE COURT: Thank you, ma'am.

12 All right. Next we'll go to Panel Member No. 15.

13 THE PANEL MEMBER: My name is John Epting. I live
14 in Longview, Texas. I have three grown children.

15 Work for Westlake Chemical. I've been there 14 years. I
16 have a high school diploma.

17 My spouse's name is Terry Epting, and she is currently on
18 disability.

19 And I have no prior jury service.

20 THE COURT: Tell me what you do for Westlake
21 Chemical.

22 THE PANEL MEMBER: Mechanical inspector.

23 THE COURT: All right, sir. Thank you.

24 THE PANEL MEMBER: Thank you.

25 THE COURT: Next is No. 16.

1 THE PANEL MEMBER: My name is Thomas Enloe. I live
2 outside of Gilmer in the country there for about the last 20
3 years. I have one son, one grandson.

4 I'm a professional home inspector, self-employed for the
5 last almost 20 years. Education is high school, some college.

6 Spouse's name is Amy. She was a -- she is a retired
7 teacher. It's the reason I'm still working. And she worked
8 for about 26 years, finished in Gilmer.

9 And I have one previous service, civil service in Gilmer
10 about five years ago.

11 THE COURT: Thank you, sir.

12 Next is Ms. Foster, No. 17?

13 THE PANEL MEMBER: My name is Linda Foster. I live
14 here in Marshall, Texas, the last 55 years. I have no
15 children.

16 I am retired from Marshall ISD after 28 years service as
17 a teams clerk. I have graduated from high school.

18 I have no spouse.

19 I have two criminal prior jury selections here in
20 Harrison County.

21 THE COURT: Thank you, ma'am.

22 Next is No. 18, Mrs. Shed?

23 THE PANEL MEMBER: Good morning. My name is Vera
24 Shed, and I have nine grown childrens and about 30-plus
25 grandchildren.

1 And my place of employment is an individual, Gene Warren,
2 and I am a home-care worker. And I've been with him for about
3 two years. And I did graduate high school, and I left
4 college.

5 My spouse is deceased, and I have no prior criminal or
6 civil case.

7 THE COURT: Thank you, ma'am.

8 Next is No. 19, Mr. Peterson.

9 THE PANEL MEMBER: My name is Jonathan Peterson. I
10 live in Big Sandy, Texas. I don't have any children.

11 I'm a computer programmer at SFG, which is a fulfillment
12 house in Big Sandy. I've worked at the company for 10 years,
13 but I've been in my position for four. I have a college
14 bachelor degree in computer information systems.

15 I don't have a spouse, and I've been summoned but never
16 selected before.

17 THE COURT: Thank you very much.

18 All right. Next is No. 20, Mr. Garrison?

19 THE PANEL MEMBER: Yes, sir. My name is Thomas
20 Garrison. I live in Marshall, Texas, and I've lived here all
21 53 years. I have four young children at home. I have three
22 adult children.

23 I'm a forester, and I graduated 31 years ago.

24 My spouse's name is Maria, and she works at the Master
25 Craft Woodworks, and she's worked there about eight years.

1 And I've had both civil and criminal cases here in
2 Harrison County.

3 THE COURT: You said you graduated 31 years ago.
4 Was that high school?

5 THE PANEL MEMBER: Forestry school.

6 THE COURT: Where was that?

7 THE PANEL MEMBER: Panola College, and I graduated
8 high school in '88.

9 THE COURT: Thank you.

10 All right. Next is No. 21, Mrs. Wells?

11 THE PANEL MEMBER: Good morning. My name is Dorothy
12 Wells. I live in Atlanta, Texas. I have three kids and eight
13 grandkids.

14 My place of employment, I work Linden -- Focused Care of
15 Linden nursing home. I'm a cook. My education, I graduated
16 high school in '78.

17 My spouse is deceased, and I have no civil.

18 THE COURT: All right. Thank you, Mrs. Wells.

19 Next is No. 22.

20 THE PANEL MEMBER: Good morning. My name is Lori
21 Aksamit. I've lived in Marshall for about five years. Before
22 that, I lived in Longview. No children.

23 I work at Blue Cross Blue Shield of Texas as what's
24 called a provider services specialist, technical specialist.
25 I've worked there for nine years. I have some college.

1 My husband's name is Michael. He is retired. Before
2 that, he worked for FedEx as a driver for about six or seven
3 years.

4 And I have two criminal cases, not in Texas, though, one
5 in New York and one in Arizona.

6 THE COURT: Thank you very much, ma'am.

7 Next is No. 23, Mr. Allen.

8 THE PANEL MEMBER: Good morning.

9 THE COURT: Good morning.

10 THE PANEL MEMBER: My name is Adrian Allen, Jr. I
11 live in Cass County, Linden, Texas. My wife and I have three
12 grown daughters. The youngest is a naval officer based in
13 Norfolk, Virginia.

14 And my place of employment, I work for TxDOT in
15 Texarkana. I've been there for 13 years. My prior job was
16 ALCOA aluminum in Nash, Texas. And I've worked TxDOT for 13
17 years.

18 My education, I graduated from high school in Linden,
19 Kildare. I did industrial electrician school at Texarkana
20 College.

21 And my spouse is Cassie Allen. She is a teacher at
22 Avinger ISD in Avinger, Texas, first and second grade reading.

23 THE COURT: How long has she taught school, sir?

24 THE PANEL MEMBER: She's taught school for over
25 30-something years at different schools.

1 THE COURT: And what did you do for TxDOT or what do
2 you do?

3 THE PANEL MEMBER: I work in the maintenance and
4 heavy equipment at TxDOT.

5 THE COURT: All right. And have you ever had any
6 jury service before?

7 THE PANEL MEMBER: Yes. One criminal case in Cass
8 County.

9 THE COURT: Thank you very much, Mr. Allen.

10 All right. Next is No. 24, Mr. Pritchett.

11 THE PANEL MEMBER: My name is Daniel Pritchett. I
12 live in East Mountain, Texas, been there 20 years. I have
13 three small children--a nine-year-old, a 12-year-old, and a
14 14-year-old. They're busy in baseball right now.

15 My place of employment is ABC Auto Parts, and I'm in
16 human resources. I've been there right at four years. I have
17 a Bachelor's of Business Administration from LeTourneau
18 University.

19 My wife's name is Julie, and she works for Ameriprise
20 Financial, and she just celebrated her 20th year there.

21 And I have no prior jury service.

22 THE COURT: All right. Thank you, Mr. Pritchett.

23 Next is panel member No. 25, Mrs. Taylor.

24 THE PANEL MEMBER: My name is Debbie Taylor. I live
25 here in Marshall for almost a year. Prior to that, we were in

1 Jefferson for 11 years. I have one child at SFA.

2 I work at Jefferson ISD as a second grade teacher. I've
3 been there for seven years now. I've got a Master's degree.

4 Married to Jeff. He is retired pastor.

5 And I have no prior service.

6 THE COURT: Thank you, ma'am.

7 No. 26 is next, Mr. Early.

8 THE PANEL MEMBER: I am John Early from Avinger,
9 Texas. I have three children, got three grandkids.

10 I'm retired. I was a rural letter carrier for 30 years
11 for the U.S. Postal Service. I've got some college.

12 My wife's name is Cindy. She's a homemaker.

13 And I did serve one time on a grand jury in Cass County.

14 THE COURT: Thank you very much, sir.

15 Next is No. 27, Mr. Dellinger?

16 THE PANEL MEMBER: Yes. My name is Jack Dellinger,
17 and I live outside of Jefferson on Caddo Lake. I have two
18 adult children.

19 And I'm retired from Cooper Tire & Rubber company in
20 Texarkana. I was there 32 years and four months and retired
21 in 2020. I graduated from Atlanta High School in 1981, and I
22 do have some college.

23 My wife's name is Celeste. She's currently teaching at
24 Texarkana, Arkansas, middle school. She's in her fourth year
25 there and her 30th year overall. She has 25 in Texas and

1 retired.

2 And I have been on a jury one time, civil case in this
3 room.

4 THE COURT: Thank you, sir.

5 All right. Next is No. 28, Mr. Berg?

6 THE PANEL MEMBER: My name is Robert Berg. I live
7 in Hughes Springs, been there for 30 years now. I have three
8 grown children.

9 I work at C&C Motors in Mt. Pleasant, been there for 29
10 years. Education background, graduated high school in '79.
11 One year of trade school, graduated in '81.

12 Wife's name is Julie. Her previous employment was three
13 years at a VA lawyer's office. She got out of there in 2012,
14 and she's been a homemaker.

15 And no prior jury services.

16 THE COURT: Thank you, sir.

17 Next is Panel Member No. 29, Miss Robinson.

18 THE PANEL MEMBER: Good morning. My name is Tashara
19 Robinson. I have lived in Marshall all of my life, 37 years.
20 I have three children--a 17-year-old daughter, nine-year-old
21 son, and four-year-old daughter.

22 My place of employment is Wiley College. I've been there
23 for the past five-and-a-half years as an executive
24 administrative assistant to the student affairs. My
25 educational background, I am a 2004 graduate of Marshall High

1 School. And I have an Associate's degree from Kilgore College
2 in child development.

3 I've never married. And prior jury services is a
4 criminal case back in 2011 in the county courthouse.

5 THE COURT: Thank you, ma'am.

6 Next is No. 30, Mr. Singletary.

7 THE PANEL MEMBER: Yes, sir. My name is Neal
8 Singletary, Longview, Texas. Two grown children.

9 Self-employed for the last 25 years, supervising the
10 drilling of oil and gas wells for operators. High school
11 education, graduated 1972.

12 Wife's name is Lisa Singletary. She's kept books and
13 secretarial stuff for us the last 25 years.

14 And no prior jury service.

15 THE COURT: All right, sir. Thank you.

16 No. 31 is next, Mr. Reese?

17 THE PANEL MEMBER: Yes. My name is Braden Reese. I
18 am from Pittsburg, Texas. I have two small kids.

19 I'm the owner and operator of Apex Construction and Land
20 Management. Before that, I'm a disabled veteran. I've been
21 there for about a year. I've got a high school diploma.

22 My wife's name is McKenzie. She does logistics and stuff
23 like that for an 18-wheeler company. She's been there for
24 about five years.

25 And no prior jury services.

1 THE COURT: Thank you, sir.

2 Mr. Keith, No. 32, is next.

3 THE PANEL MEMBER: Jonathan Keith. I go by Alex,
4 live here in Marshall, Texas. Four children.

5 I work for Cadence Bank as a financial advisor, been
6 there about three-and-a-half years. Bachelor's of Science in
7 commerce and supply chain management and an MBA with a focus
8 in finance.

9 My wife's name is Tiffany. She's a homemaker besides
10 cleans some RVOs on the side.

11 And then just one prior jury service, criminal case here
12 in Marshall.

13 THE COURT: Thank you.

14 Last is No. 33, Mrs. Burns?

15 THE PANEL MEMBER: I'm Verenda Burns. I live in
16 Pittsburg, Texas. No children.

17 Retired from Camp County Tax Assessor's Office after 40
18 years. Graduated from Pittsburg High School, some college.

19 My husband is Dwight Burns. He's retired from Red River
20 Army Depot as an inspector, 35 years.

21 And I served on grand jury in Camp County.

22 THE COURT: Thank you, ma'am.

23 Thank you, ladies and gentlemen.

24 Now, I need to say a couple of more things to you before
25 I turn over the questioning to the lawyers. The jurors who

1 are actually selected to serve in this case will serve in the
2 role as the judges of the facts, and the jury selected will
3 make the sole determination in this case about what the facts
4 are.

5 Now, my job as the judge is to rule on questions of law,
6 evidence, and procedure that may arise during the trial, to
7 maintain the decorum of the courtroom, and to oversee an
8 efficient flow of the evidence during the trial.

9 Also I want to say a couple of things to you about our
10 judicial system that hopefully will put things in a proper
11 perspective for everyone.

12 In any jury trial, besides the parties themselves, there
13 are always three groups of participants--the jury, the judge,
14 and the lawyers. Now, with regard to the lawyers, it's
15 important for each of you to understand that our judicial
16 system is an adversary system, which simply means that during
17 the course of the trial each of the parties will seek to
18 present their respective cases to the jury through their
19 counsel in the very best light possible.

20 And it should be no surprise to any of you that sometimes
21 lawyers are criticized in the public and in the media, but the
22 Court's observed that some of that criticism is a
23 misunderstanding of our adversary system in which the lawyers
24 act as competing advocates representing the parties.

25 And as an advocate, a lawyer is ethically and legally

1 obligated to zealously assert his or her client's position
2 under the rules of our adversary system. And by presenting
3 the best case possible on behalf of their clients, the lawyers
4 hopefully will enable the jury to better weigh the relevant
5 evidence and determine the truth and arrive at a just verdict
6 based on that evidence.

7 Now, this adversary system of justice has served our
8 nation well for over 200 years, and America's lawyers have
9 always been, are now, and will continue to be an indispensable
10 part of that process.

11 So as we go forward with this trial, even though it's
12 possible that I might occasionally roll my eyes or frown at
13 the lawyers, I'm simply trying to make sure that their
14 advocacy doesn't get outside the bounds of our adversary
15 system. But you need to keep in mind, ladies and gentlemen,
16 that they are simply doing their jobs, and I think that's
17 important for you to be aware of as we go forward.

18 Also, ladies and gentlemen, as to those of you that are
19 selected on this jury, I can tell you that over the course of
20 the trial, I am going to do my very best not to give you any
21 idea what I think about the evidence in this case, because
22 determining the facts in this case based on the evidence is
23 the jury's job, it's not my job as the judge. Therefore,
24 any of you that are selected on this jury should not take any
25 expressions or comments or things that you hear or see or

1 think you hear or see as coming from me as something to
2 consider in making the ultimate decision about what the facts
3 are in this case.

4 Now, with that, ladies and gentlemen, we'll proceed to
5 have the attorneys for both sides address the panel make their
6 statements and ask their questions.

7 Mr. Baxter, you may address the panel on behalf of the
8 Plaintiff. Would you like a warning on your time?

9 MR. BAXTER: Yes, five and one, Your Honor.

10 THE COURT: I'll warn you when you have five minutes
11 remaining and one minute remaining.

12 MR. BAXTER: Thank you, Your Honor.

13 THE COURT: You may proceed when you're ready.

14 MR. BAXTER: Thank you, sir.

15 Good morning, ladies and gentlemen. As the Judge said,
16 my name is Sam Baxter. I'm a lawyer here in Marshall and I've
17 been practicing law in Marshall in one way or another for the
18 last 50 years. Before doing this sort of work, I was in the
19 DA's office here, and I was the DA for 15 years.

20 And then I went on the bench for a brief period of time,
21 not like Judge Gilstrap but rather like Judge Morin down the
22 street. And I did that for a while. And my creditors asked
23 me to leave public service and pay my bills, and so I've been
24 practicing law ever since.

25 I'm married, and I'm married to Judge Lauren Parish. And

1 I tell you that because she is the retired senior judge for
2 the district court in Upshur County and Marion County, and
3 some of you are from those neck of the woods and some of you
4 have been in court recently. She retired only two years ago.

5 So who on the panel knows my wife, Judge Lauren Parish?
6 Anyone? Been in her court? All right.

7 I've got four kids, three adopted children. Andrew from
8 Brazil -- and I want to talk to our Boys and Girls Club
9 representative in the back, Mr. Keith.

10 Mr. Keith, you know Andrew?

11 THE PANEL MEMBER: I do know Andrew.

12 THE COURT: Let's wait until you get a microphone
13 and stand up, Mr. Keith.

14 THE PANEL MEMBER: I do.

15 MR. BAXTER: Andrew's a joy, isn't he?

16 THE PANEL MEMBER: He's a funny guy.

17 MR. BAXTER: He is a funny guy. He's got a little
18 Asperger's, and he is a little hyper, but he certainly does
19 his best. Anything about that that would be a problem, Mr.
20 Keith?

21 THE PANEL MEMBER: No, sir.

22 MR. BAXTER: All right. My middle child is Matthew.
23 And while Andrew is Brazilian, Matthew is from Thailand. He
24 works as a tech supervisor in Dallas.

25 And I have a young daughter, Sophie, that's currently

1 working in Bangkok, although I hope to get her back in the
2 states soon. She's from India.

3 And I have a stepson named Keyton Boggs who's the
4 percussion leader at the Hallsville High School band.
5 Anybody know Keyton or Mr. Boggs? Anybody at all? All right.

6 The Court has said that we could talk for a very brief
7 period of time about what this case is about. And as you have
8 heard, it's a patent case, but I think you're going to find it
9 very interesting. And it has to do with memory modules,
10 something we don't talk about every day, but something we use
11 every day. And they go in data servers, and they're essential
12 for all big companies, all parts of government, for instance,
13 the Department of Defense or Department of State, or us using
14 our computers at home. The data servers that carry our
15 messages that hook us up to the internet have memory modules.

16 Now, here's the problem with memory modules. You want
17 them to go fast, you want them to be reliable. But to go
18 fast, you have to give them more power. And when you give
19 them more power, it gives off more heat, and that's a problem.
20 If you try to increase the power without doing certain things,
21 you're going to get unreliable data and you're going to lose
22 it.

23 Anybody want to sign up for a computer that loses your
24 data? Anybody at all?

25 Everybody think it's pretty safe to use your data, put it

1 in the cloud, leave it on your computer, but that it won't be
2 corrupted and it won't be taken from you somehow by the
3 computer? Anybody think that's important or everybody think
4 that's important?

5 Well, that's what Netlist does. Netlist has patents, and
6 you're going to hear about six of them I think in this case,
7 that deliver more power and more reliability and more speed,
8 and that's what this case is going to be about.

9 Here are some of the accused products you're going to
10 hear about in this case. You're going to learn lots of
11 acronyms and lots of initials, but these are memory modules
12 and you'll see these as we go forward in the case. And
13 there's one particular one called a dual in-line memory
14 module, and that's because it's got pins on both sides.

15 And so anybody have any experience with memory modules?
16 Now, I've got two computer geeks on the jury, and the first
17 one is No. 8, Mr. Simpson.

18 Mr. Simpson, tell me what you know about memory modules
19 and how you work with them and what you do with them.

20 THE PANEL MEMBER: Well, I mean, primarily they're
21 the main memory that all the processing happens out of. I
22 reset a set of memory modules in a Dell server here recently
23 because we were having some problems with heat.

24 MR. BAXTER: With heat.

25 THE PANEL MEMBER: With heat, yeah.

1 THE COURT: Mr. Simpson, hold the microphone a
2 little closer.

3 THE PANEL MEMBER: Anyhow --

4 MR. BAXTER: All right. Mr. Simpson, let me tell
5 you why you're a problem to be on this jury, and that is, I'm
6 afraid you're going to be a jury of one, that if I were on the
7 jury with you and I knew you worked in computers and we
8 started talking about memory modules, I'm going to look over
9 at you and say, Mr. Simpson, what do you think?

10 And so my question I guess, Mr. Simpson, I don't want to
11 devoid you of all your knowledge about computers, that's
12 helpful, but do you think you'll be able to listen to the
13 experts and talk in the jury room about what the experts said
14 these memory modules are doing and what the patents require?

15 THE PANEL MEMBER: Most definitely.

16 MR. BAXTER: You think you can at least leave some
17 of your past experience here in the courtroom and not take it
18 in the jury room so that you're discussing all the same thing,
19 which is primarily you're talking about the experts'
20 testimony.

21 THE PANEL MEMBER: Yes, sir.

22 MR. BAXTER: Have you ever been in court for a
23 computer-related issue of any sort?

24 THE PANEL MEMBER: No, sir.

25 MR. BAXTER: Ever testified or had to be deposed

1 about computers at your work site?

2 THE PANEL MEMBER: No.

3 MR. BAXTER: All right. Thank you, sir.

4 Now, I've got one more person that's also tech savvy, and
5 that's Mr. Peterson.

6 Mr. Peterson, tell me about your experience in computers
7 and what you do right now.

8 THE PANEL MEMBER: I tend to lean more into the
9 software, so I'm not too familiar with the hardware.

10 MR. BAXTER: All right. You're a coder?

11 THE PANEL MEMBER: Yes, sir.

12 MR. BAXTER: All right. Do you write code? What
13 kind of code do you write?

14 THE PANEL MEMBER: RPG, CL, SQL, stuff like that.

15 MR. BAXTER: And for those of us that don't speak
16 computerized, those are languages that you use to code a
17 computer.

18 THE PANEL MEMBER: Yes, sir.

19 MR. BAXTER: So you and Doctor Burgess could have a
20 conversation about that, but the rest of us couldn't.

21 THE PANEL MEMBER: It sounds like he's more
22 hardware.

23 UNIDENTIFIED PANEL MEMBER: I'm database engine.

24 THE PANEL MEMBER: Oh, okay. Then yes.

25 MR. BAXTER: Okay. My partner over here, Doctor

1 Burgess, has a double E in electrical engineering, a Ph.D. in
2 electrical engineering, and he writes code. Is that the sort
3 of thing you do?

4 THE PANEL MEMBER: Yes. Along those lines, yes.

5 MR. BAXTER: Any problem about that being in the
6 jury room, Mr. Peterson, and everybody turning to you and
7 saying, okay, explain these memory modules to us? Is that
8 going to be a problem?

9 THE PANEL MEMBER: Not from me, no.

10 MR. BAXTER: Okay. Thank you, sir. I appreciate
11 it.

12 Now, the lawyers on the other side are over here at this
13 table. The lead lawyer is Mr. Ruffin Cordell. He's from
14 Washington, D. C. He's with a firm called Fish & Richardson.
15 And his co-counsel is Melissa Smith. Now, she has an office
16 here in Marshall and appears in this court probably as much or
17 more than anybody else active in the Bar.

18 Anybody perchance know Mr. Cordell by happenstance? But,
19 more importantly, anybody know Ms. Smith, who has an office
20 here and has practiced here in Marshall for 26 years, she
21 tells me, a long time. Anybody know Ms. Smith?

22 All right, sir. You do. Mr. Stewart, I must say, Mr.
23 Stewart, we're all disappointed that you have retired.
24 Stillwater Animal is a great place to go, and I miss it even
25 now. But how do you know Ms. Smith?

1 THE PANEL MEMBER: I only know Ms. Smith through the
2 restaurant. I think we had one social occasion many years ago
3 at our house, I believe, if I'm not mistaken, but -- so that's
4 it. I don't -- I wouldn't -- actually it's been ages since
5 I've seen her. So I probably wouldn't recognize her if I
6 passed her in the street.

7 MR. BAXTER: All right. Anything about that, Mr.
8 Stewart, that would be a problem of you sitting in this jury
9 if Ms. Smith is taking a position that's contrary to what we
10 take on our side of the table?

11 THE PANEL MEMBER: No.

12 MR. BAXTER: Okay. No problem at all?

13 THE PANEL MEMBER: No problem.

14 MR. BAXTER: All right. My wife wanted me to get
15 the salmon recipe, but we can talk about that later.

16 THE PANEL MEMBER: Buy a cookbook.

17 MR. BAXTER: All right. Now, who's heard of
18 Samsung? Is there anybody that hasn't heard of Samsung?
19 Anybody heard of my client, Netlist, before? Well, you-all
20 know Samsung and none of you know my client.

21 Is that a problem? Anybody think that just because you
22 know Samsung and you know they make a lot of products, that
23 that's a problem going into this case, that you would not want
24 to find against them? Anybody at all?

25 Now, Samsung is, I think the evidence is going to be, the

1 largest memory module manufacturer in the world, and of course
2 they make great TVs. I've got two in my house. Anybody got
3 Samsung products in their house? Is that a problem for those
4 of you that have got a TV or a refrigerator, is that a problem
5 for any of you?

6 Anybody ever travel to Korea as a military person or as
7 just as a tourist? Anybody been to Korea?

8 Anybody does business with Samsung in any way?

9 Is there anyone that's ever worked for Samsung or one of
10 its related companies?

11 Has anyone on this jury panel ever applied for a patent
12 or had a family member or a close friend that applied for a
13 patent? Anybody at all? Anybody ever dealt with the Patent
14 Office or know anything about applying for a patent?

15 Who works for a company that owns intellectual
16 property--that is, they own patents? And let me suggest a
17 few. Clearly, the paper plant, IP plant, or whatever it is
18 now has patents. Texas Eastman has a lot of patents. Is
19 there anybody that off the top of their head know whether
20 their company owns intellectual property or not?

21 Yes, sir. No. 6, Mr. Bounds. Who do you work for, sir?

22 THE PANEL MEMBER: Thru Tubing Solutions.

23 MR. BAXTER: And do you know what kind of patents
24 they have?

25 THE PANEL MEMBER: It's on oil tools and stuff like

1 that.

2 MR. BAXTER: Downhole, downhole tools?

3 THE PANEL MEMBER: Yes, sir.

4 MR. BAXTER: Are you involved in applying for those
5 in any way whatsoever?

6 THE PANEL MEMBER: No, sir. I helped develop one of
7 them, but I hadn't --

8 MR. BAXTER: Did they name you as an inventor, do
9 you think?

10 THE PANEL MEMBER: No.

11 MR. BAXTER: Okay. Do you know what the company
12 does, Mr. Bounds, to protect their intellectual property? If
13 they had a patent on a downhole tool and it was really
14 important to them and they found out that one of their
15 competitors had knocked their product off and was using the
16 very same thing, do you know what they would do to try to
17 enforce their intellectual property rights?

18 THE PANEL MEMBER: I assume they'd file suit.

19 MR. BAXTER: Do you know of anything else they can
20 do besides write a nasty letter?

21 THE PANEL MEMBER: No, sir.

22 MR. BAXTER: Go hire some lawyer and say, cease and
23 desist or we're going to sue you, and then you have to sue
24 them? Anything about that, do you think, Mr. Bounds, that's a
25 problem about people coming to court to enforce their

1 intellectual property rights?

2 THE PANEL MEMBER: No, sir.

3 MR. BAXTER: Thank you, sir.

4 Does anybody on the panel know of any other way that a
5 company can enforce its intellectual property rights other
6 than applying for a patent, getting a patent, and then going
7 to court if someone takes their property? Does anybody have a
8 problem with people coming to court over intellectual
9 property? Anybody at all?

10 Now, one of the questions that you were asked on your
11 questionnaire that you were kind enough to fill out for us
12 before you came to court is about too many lawsuits and too
13 many lawyers.

14 Now, I'm going to stipulate with you there are too many
15 lawsuits and there are too many lawyers. Now, my colleagues
16 are trying to push me out the door because of age, but there's
17 a whole bunch behind me.

18 Does anybody have a problem with people coming to court
19 to enforce their property rights when they think they've been
20 taken by somebody else? Anybody at all?

21 Who believes there are too many lawsuits?

22 Ms. Kelso, let me ask you, what kind of lawsuits do you
23 have some sort of objection to?

24 THE COURT: No. 3.

25 MR. BAXTER: If you can give her the mic.

1 THE COURT: And, Counsel, if you'll refer to the
2 number, that will help the CSO.

3 MR. BAXTER: Thank you, Your Honor. I appreciate
4 it.

5 THE PANEL MEMBER: I'm sorry. I don't like public
6 speaking, so -- I just think that there's just too many
7 lawsuits going on. Everybody -- every time you turn the
8 corner if -- I do watch the news, it's somebody suing somebody
9 for something else, and it's just -- I don't know. I just
10 think there's too much of it going on.

11 MR. BAXTER: Do you think we fall into that bucket
12 of too many lawyers, too many lawsuits, because we are in a
13 patent lawsuit?

14 THE PANEL MEMBER: I think those are a little bit
15 different than other lawsuits that go on every day.

16 MR. BAXTER: Okay. How many people might agree with
17 Ms. Kelso that patent lawsuits just are sort of a different
18 breed of cat; that it's a different kind of case and you would
19 not expect to see too many patent lawsuits or know anything
20 about those? Does anybody have a contrary opinion?

21 Who else thinks there are too many lawsuits and kind of
22 explain to me what the problem might be? Who else?

23 Mr. Bounds, you do. Tell me why you think there are too
24 many of us.

25 THE PANEL MEMBER: I worked for the government for

1 25 years, and every time we turned around, we had a lawsuit
2 against us.

3 MR. BAXTER: Okay. What kind of lawsuits were they?

4 THE PANEL MEMBER: Wrongful death, stuff like that.

5 MR. BAXTER: All right. Anything having to do with
6 people enforcing their property rights?

7 THE PANEL MEMBER: No.

8 MR. BAXTER: All right.

9 Anybody else have any problem with a company or an
10 individual enforcing their property rights and coming to court
11 and filing a lawsuit and saying, that's my property and you're
12 trespassing on my property, or you've taken my property, and I
13 want you to stop? Anybody at all?

14 Now, you heard on the video, I think, that, in fact,
15 patents are property rights, and I think they even showed that
16 you can have boundaries and there are fence lines. But
17 they're still a property right. And so does anybody have any
18 problem at all with people protecting their property and
19 trying to tell other people, you can't use it?

20 I mean, if you went off on vacation and came home and
21 found someone had moved into your house and in fact had taken
22 your property, is there any doubt in your mind that all of you
23 would call the sheriff first and call the lawyer second?

24 Anybody have a problem with that at all? All right.

25 Now, one of the things that Judge Gilstrap told you

1 toward the end of his instructions to you today is that you
2 are the judges of the facts, he does the law. We try to work
3 within the constraints of what Judge Gilstrap tells us the law
4 is. But the facts are solely within the providence [sic] of
5 the jury.

6 And along with that goes what I call the credibility of
7 the witnesses. And you're going to be hearing witnesses
8 giving some contrary opinions that some other person may have
9 given in the court. And so one of the things you've got to
10 decide is who's the most credible, who do I believe, who is it
11 that I think has done the best job of explaining the facts to
12 me, and I think that person is the most credible. Is there
13 anybody that has any problems with that at all, that you're
14 going to be the judges of the credibility?

15 Is there anybody that's ever joined an organization
16 that's against lawsuits? Anybody been a member of someone
17 that says, oh, too many lawsuits, we're going to try to pass
18 laws that cut them down?

19 Who else besides the two gentlemen that I talked to has
20 experience in computers, whether it's working on them, writing
21 code, or knowing how to fix them? Anybody else besides the
22 two gentlemen that I talked to?

23 Is there anybody that's worked on data servers? Who in
24 their regular job has to go and sit in front of a computer for
25 long stretches of time? No. 2 and 3 and 6 and 13 and 14. And

1 who else out here? All right. On the front row, No. 15 and
2 16.

3 Of those of you that work with computers in your daily
4 job, how many of them want the computers to be fast? Is it
5 irritating if the computer slows down and you're sitting there
6 looking at a black screen?

7 Mrs. Jordan, tell me what you do again, No. 14?

8 THE PANEL MEMBER: I work for the State of Texas and
9 process driver's licenses.

10 MR. BAXTER: Okay. I take it that you, in fact, are
11 having to look -- when I come in and I usually don't have the
12 right ID or I'm stumbling around not knowing what I'm doing in
13 getting my driver's license renewed, is that something you've
14 got to click and clack on the computer about?

15 THE PANEL MEMBER: Yes, sir. We check paperwork and
16 then process the driver's license or ID.

17 MR. BAXTER: Do you expect it to be fast?

18 THE PANEL MEMBER: Yes, sir.

19 MR. BAXTER: Do you expect it to be reliable?

20 THE PANEL MEMBER: Yes, sir.

21 MR. BAXTER: If you were to go into the store and
22 you were either looking for yourself for a new computer or
23 looking for one for the State of Texas and the sign says,
24 super fast computer, \$1,000, and the sign next to it says, not
25 nearly as fast, \$900 dollars, which one are you going to get?

1 THE PANEL MEMBER: I have no clue.

2 MR. BAXTER: Okay. Do you want your computer to be
3 fast?

4 THE PANEL MEMBER: Right.

5 MR. BAXTER: Would you pay a little extra for it to
6 be fast instead of slow?

7 THE PANEL MEMBER: Probably.

8 MR. BAXTER: Okay. Is there anybody that disagrees
9 that they want their computer to be fast? Anybody at all? Is
10 there anybody that disagrees that you might even in fact pay a
11 little bit more for that computer to be fast and reliable?
12 Would everybody do that? Is there anybody that wouldn't do
13 that? They would go, no, slow and creaky and unreliable is
14 good enough for me. Anybody do that?

15 Now, the Judge talked to you about something that's very
16 important in this case, and that is the burden of proof. And
17 I want to kind of go over that with you again just for a
18 moment.

19 The first thing that I think he's going to tell you in
20 instructions is that patents that are issued by the Patent
21 Office are presumed to be valid. And I think he'll tell you
22 that if you're on this jury, that as you go forward in this
23 case, you are to presume the patent to be valid.

24 But then you're going to hear issue about infringement,
25 and the burden on infringement is on the Plaintiff, it's on

1 us, and it's a burden that he delineated to you to be by a
2 preponderance of the evidence. And if you started out with
3 the scales even, like this, nothing on them, they're exactly
4 balanced, then you have to determine if someone had proven the
5 case to you, I believe Judge Gilstrap is going to tell you
6 that you must be persuaded by the evidence that the claim is
7 more probably true than not true. And that's the burden that
8 we have to show you that the machines that are sold by Samsung
9 infringe our patents.

10 Is there anybody that thinks they could not follow that
11 instruction from the Judge about a preponderance of the
12 evidence, that that's the burden that the Plaintiffs have, and
13 we gladly accept that, but it just simply has to be more
14 likely true than not, a preponderance of the evidence, one
15 more BB?

16 But he also told you about a different burden of proof
17 that's called clear and convincing. And one of the things
18 you're going to hear in this case is that Samsung believes and
19 are going to try to prove to you that our patents are invalid.
20 The jury can make that determination. And even though they've
21 been issued by the Patent Office, and even though they're
22 presumed to be valid, they're going to try to convince you
23 that the patents are invalid.

24 But their burden is much higher. It's called clear and
25 convincing evidence. And I think you're going to get an

1 instruction something like it has to be an abiding conviction
2 that the truth of the party's factual contentions are highly
3 probable, so that if you looked on a scale or a ruler, a
4 foot-long ruler, if you got to the six-inch mark and one more
5 mark would be the preponderance of evidence, but way over here
6 at number 11 would be clear and convincing, does anybody have
7 any question about that burden of proof or anybody think they
8 couldn't follow the Court's instructions about the burden of
9 proof?

10 THE COURT: You have five minutes remaining.

11 MR. BAXTER: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 MR. BAXTER: Let me talk in the last minutes
14 remaining about something that is going to be true in all
15 these cases, and that is, this is a case not only about patent
16 infringement, but it's a case about damages.

17 And at the end of the day, we're going to ask the jury to
18 find that our patents are valid, that they are infringed, and
19 then we're going to ask for money damages because of that
20 infringement. And you're going to hear experts talk about
21 that.

22 But let me tell you that the number in round numbers that
23 we're going to suggest to the jury that Samsung owes us in
24 this litigation is \$400 million. And that's a lot of money.
25 And I know that some of you on your questionnaire says that

1 damages may be too high.

2 Now, no way I'm going to try to get you committed up this
3 morning to give us \$400 million because you haven't heard any
4 evidence. My question to you is slightly different. Is there
5 anybody that, as they sit here today, says 400 million? Why,
6 I could never do that, I don't care what the facts are, that's
7 too much money.

8 Is there anybody that filled out that questionnaire about
9 damages being too high, had reference to a patent case and had
10 reference to numbers like 400 million? Anybody at all on the
11 first row?

12 Anybody on the second row? Mrs. Griffin, No. 13, let me
13 ask you, knowing you haven't heard a shred of evidence and
14 knowing that what we said up here today is not evidence, do
15 you feel like that you could listen to the evidence and make
16 up your mind about what the damages are even if it ended up
17 being in the hundreds of millions of dollars?

18 THE PANEL MEMBER: I think I could do that.

19 MR. BAXTER: All right. Would you listen to the
20 damage experts and the rationale about why that much money?

21 THE PANEL MEMBER: That's what I'd have to listen
22 to.

23 MR. BAXTER: Okay. But after you heard that, if you
24 were convinced by a preponderance of the evidence, do you feel
25 like that you could write down on the jury blank \$400 million

1 if that's what the evidence showed you?

2 THE PANEL MEMBER: If that's what it showed me.

3 MR. BAXTER: Okay. Is there anybody different from
4 Mrs. Griffin that if you're in the jury room and you have
5 found the patents to be valid and you find that Samsung has
6 infringed our patents and has taken our property, that they
7 would hesitate for a minute, if the evidence showed it, to
8 write in a number in the \$400 million range? Anybody at all?

9 Mr. Enloe, let me get you a microphone.

10 THE COURT: No. 16.

11 THE PANEL MEMBER: Yes, sir.

12 MR. BAXTER: Do you feel like you could that, Mr.
13 Enloe?

14 THE PANEL MEMBER: That's questionable in my mind.

15 MR. BAXTER: All right, sir.

16 THE PANEL MEMBER: That's tough.

17 MR. BAXTER: It's a big number, isn't it?

18 THE PANEL MEMBER: It depends on what I hear.

19 MR. BAXTER: Well, do you go in with the thought
20 that, no, I could never give that kind of money, but maybe
21 they can persuade me, or kind of what's your mindset going in?

22 THE PANEL MEMBER: I wouldn't go in saying it
23 wouldn't get it.

24 MR. BAXTER: All right.

25 THE PANEL MEMBER: But it would seriously need to be

1 proven to me.

2 MR. BAXTER: Okay. If, in fact, the testimony was
3 and the evidence was and you were convinced that they had
4 taken the property and that it was our property and it was
5 valid and they were using it and they got enough advantage out
6 of using our property that they made a profit off of it, do
7 you feel like that you could, in fact, give that sort of
8 damage award?

9 THE PANEL MEMBER: That's the kind of proof I'd have
10 to see.

11 MR. BAXTER: Okay.

12 THE COURT: One minute remaining, counsel.

13 MR. BAXTER: Thank you, Your Honor.

14 Is there anybody --

15 Thank you. I appreciate that, Mr. Enloe.

16 Anybody disagree with that on the jury panel, that if the
17 evidence is there, that even though that's a large number and
18 probably not a number you thought about before you came to
19 court today, that you, in fact, could give \$400 million if
20 that's what the evidence compelled you to do? Is there
21 anybody that can't do it?

22 Ladies and gentlemen, we look forward to bringing this
23 case to you. We think you're going to find it to be very
24 interesting. You're going to learn a lot about modules that
25 you never knew that were in the world before. And we

1 appreciate your patience and your attention.

2 Thank you, Your Honor.

3 THE COURT: All right. Defendants may address the
4 panel.

5 Ms. Smith, would you like a warning on your time?

6 MS. SMITH: I would, Your Honor. If I could get
7 five minutes and one minute remaining.

8 THE COURT: I will warn you when you have five
9 minutes remaining and one minute remaining. You may address
10 the panel when you are ready.

11 MS. SMITH: May it please the Court.

12 Good morning, everybody. And everybody in kind of the
13 back row as well, good morning.

14 By the way of reintroduction, again, my name is Melissa
15 Smith. And I, along with my colleagues and, more importantly,
16 my friends, Mr. McKeon and Mr. Cordell, we represent Samsung
17 this morning.

18 Now, the most important thing I'm going to do with my 30
19 minutes this morning is to say thank you. Thank you on behalf
20 of Samsung. Samsung has a corporate representative here
21 today, Mr. Calandra. He thanks you. And thank you on behalf
22 of the 6,000 -- actually over 6,000 Texas Samsung employees
23 that we have here working hard in this state. We thank you
24 for making some long drives.

25 I kind of poured over your jury questionnaires, and I saw

1 people came from as far as Atlanta and Queen City and Big
2 Sandy. We thank you for your willingness to share your
3 personal information, both on these questionnaires that you
4 filled out before you got here and also today.

5 And, most importantly, we thank you for taking time to
6 show up and be here for service. I know and Samsung knows
7 that every minute you spend, every hour you spend in this
8 courtroom, is time away from your work, your family, your
9 friends, and your priorities. So thank you.

10 Now, His Honor give a little personal information himself
11 before he asked you questions as well as Mr. Baxter, so I'll
12 do the same, I went to the University of Austin undergrad. I
13 then immediately went, as His Honor did, to Baylor Law School.
14 I graduated from Baylor, and about two days later I moved to
15 Marion County, Jefferson, and started practicing here in
16 Marshall. That's about 26 years ago. I've been practicing
17 here in Marshall. My law firm is called Gillam and Smith.
18 It's that old yellow building. It sits behind the courthouse
19 that some of you-all drove by on the way to court today.

20 Personally, I think this is on the questionnaire, I am
21 married. My husband's name is Steven. He is retired law
22 enforcement. We have two children. We've got a little girl
23 who's nine--she's in fourth grade--and a little boy who's 11.
24 He is in sixth grade. And we spend a lot of time tending to
25 them on my time off.

1 I had one jury service, and that was a criminal case. It
2 was in Jefferson. You heard me say I'm married to law
3 enforcement, I'm a lawyer, and in 2000 I knew both attorneys.
4 So I was certain I was not going to serve. So nobody was more
5 shocked when they called my name. But it will probably never
6 happen again, but it was a pleasant experience and I wish that
7 for those of you that are chosen.

8 So let's talk a little bit about that. You know, the
9 initial shock -- after I got over the initial shock of hearing
10 my name called for jury service, I got a little grumpy and I
11 moaned and groaned as some of you may have when you received
12 the summons. And as His Honor mentioned, I mean, service is
13 certainly inconvenient and it's a sacrifice.

14 So my first question here is, the Judge asked you about
15 serious conflicts, conflicts such as surgeries or pre-paid
16 vacations, and some of you visited with him about those.

17 How many of you would say, by showing of hands, that you
18 just weren't that excited when you got the summons? Juror No.
19 3, 6, I see a lot of -- too many to list. I see a lot of
20 hands. So let me put it this way. For those of you that just
21 raised your hands, how many of you had a reason other than
22 just kind of inconvenience?

23 Juror No. 6. Tell me a little bit about that, if you
24 can.

25 THE PANEL MEMBER: Costs me money.

1 MS. SMITH: All right. All right. Costs you money.
2 Money meaning time off work as well?

3 THE PANEL MEMBER: Yes. \$600 a day.

4 MS. SMITH: And -- and I hear that often when we
5 meet here. And I, on behalf of the government, apologize for
6 the juror fee that you'll get if you serve.

7 Mr. Bounds, if you could keep standing. You said you had
8 some prior civil service. Is that correct?

9 THE PANEL MEMBER: Right.

10 MS. SMITH: Tell me a little bit about that.

11 THE PANEL MEMBER: It was an oil and gas company
12 against a property owner.

13 MS. SMITH: Okay. And was that in this court?

14 THE PANEL MEMBER: No. It was district.

15 MS. SMITH: Okay. How did it turn out?

16 THE PANEL MEMBER: They sent it to arbitration.

17 MS. SMITH: Okay. Before it went to arbitration,
18 did you -- were you the foreperson or not?

19 THE PANEL MEMBER: No. I was just a member.

20 MS. SMITH: Okay. Thank you, sir.

21 All right. Anyone else where a number of you weren't
22 very excited to get the summons, but anyone else have anything
23 to tell me that it rises to the level of more than just
24 inconvenience, you just don't want to be here, don't need to
25 be here?

1 All right. Juror No. 3, Ms. Kelso. Tell me about that.

2 THE PANEL MEMBER: Well, in my -- at the hospital I
3 work at, we're a very small department and we work three, four
4 shifts. So there's someone working opposite with me.
5 Actually we're still trying to hire for that position. So I
6 actually fill in a lot of hours and work like five, six days a
7 week because we are short-staffed.

8 And so me being here, someone's having to cover my shift,
9 and that's going -- if I get picked, that's going to be hard
10 all week long to cover my shift.

11 MS. SMITH: You introduced yourself as the person
12 that -- that fills in spots for nurses. And so when the
13 person that fills in spots for absent nurses isn't there, the
14 system breaks down? Is that fair to say?

15 THE PANEL MEMBER: Yeah. There is not a lot of
16 people that can do what we do --

17 MS. SMITH: Okay.

18 THE PANEL MEMBER: -- in our hospital.

19 MS. SMITH: I appreciate that. And your son's
20 serving in our military, is he not, right now?

21 THE PANEL MEMBER: Yes, he is. He was in the Marine
22 Corps for four years, got out, lived with me for a year, went
23 to Kilgore ENT Fire Academy, decided he missed the military,
24 reenlisted in the Army, and is now a combat medic.

25 MS. SMITH: Well, we certainly appreciate his

1 service.

2 THE PANEL MEMBER: Thank you.

3 MS. SMITH: Now, the flip side. Sometimes, not as
4 common, not as many hands, but sometimes jurors say, you know,
5 I've always wanted to do this, I got the summonsed, and I was
6 excited to be here. Is there anybody out there that said, you
7 know, I want to be on a jury, kind of excited?

8 Juror No. 9. Tell me about that. First, tell me how to
9 say your last name.

10 THE PANEL MEMBER: Yes. It's Wichlacz.

11 MS. SMITH: Wichlacz.

12 THE PANEL MEMBER: It's Polish.

13 MS. SMITH: Okay. Thank you, sir.

14 THE PANEL MEMBER: I served my country and gave me a
15 great satisfaction. And just like she was saying, you know,
16 we miss it every day. So this is a chance that I feel like I
17 can serve justice to people, you know, to the Constitution of
18 the United States and help -- help Americans have their
19 freedom. So...

20 MS. SMITH: Well, we certainly, as Judge Gilstrap
21 said, this is the second most important public service. Your
22 military service came first, of course, and we appreciate
23 that.

24 THE PANEL MEMBER: Yes, ma'am.

25 MS. SMITH: Thank you, sir.

1 Anybody else? All right.

2 Now, the Judge reminded us all that both individuals and
3 companies have a right to trial by jury. And this is a case
4 that you've heard enough about already to know it's a case
5 about two companies fighting amongst themselves about patents.

6 Is there anybody sitting there thinking, you know, this
7 just doesn't really deserve our time in the courtroom? Maybe
8 companies should compete in the marketplace instead of the
9 courtroom. Does anyone have that thought? All right. Juror
10 No. 1.

11 And my game plan here, I'll tell you, is to try to talk
12 to each one of you for just a minute.

13 So, Mrs. Snelgrove, tell me what you think about that.

14 THE PANEL MEMBER: Could you repeat the question?

15 MS. SMITH: Sure. Sure. Some people think, you
16 know, companies should compete in the marketplace, not the
17 courtroom. And others say, you know, it's perfectly fine for
18 companies to bring their squabbles into the courtroom.

19 Which way -- which way do you lean and what --

20 THE PANEL MEMBER: I think you're right --

21 MS. SMITH: -- what made you lean one way?

22 THE PANEL MEMBER: I think you're right coming here
23 because sometimes you can't -- you can't come to agreement
24 when you're in the marketplace, and things get to be where he
25 says-she says and you need to have this take place. That's

1 what I believe.

2 MS. SMITH: Thank you, ma'am. I have one more
3 question for you.

4 THE PANEL MEMBER: Yes, ma'am.

5 MS. SMITH: You told His Honor that you had some
6 prior jury service in this court. Is that correct?

7 THE PANEL MEMBER: Yes.

8 MS. SMITH: Tell me about that.

9 THE PANEL MEMBER: It was between the county
10 commissioner and a person that did not get hired by the county
11 commissioner, and he thought that since he did his campaigning
12 and did a lot of stuff for him to get hired, that he was to be
13 hired by the county commissioner to have a good job.

14 MS. SMITH: I think I know how it turned out from
15 the way you're -- from the way you're telling the story, but
16 how did it work out?

17 THE PANEL MEMBER: He was found that he didn't get
18 any -- he was --

19 MS. SMITH: He was the Plaintiff, and it was a
20 defense verdict?

21 THE PANEL MEMBER: Right.

22 MS. SMITH: Okay.

23 THE PANEL MEMBER: And so he didn't win. The person
24 that thought he should be able to have that job, he didn't get
25 his money. He wanted severing, he wanted all the things -- he

1 left his other job thinking that he was going to have what he
2 was promised. So actually it was against the other person.

3 MS. SMITH: Okay. Thank you so much, ma'am.

4 Now, Mr. Baxter visited with you-all about there being
5 too many lawsuits, and that was kind of a common theme we saw
6 across the questionnaires, quite frankly.

7 Is there anybody out there that would agree with the
8 statement, you know, we need more lawsuits to keep companies
9 honest?

10 Juror No. 2, Mr. Pomeroy, tell me what you think about
11 that statement--we need more lawsuits to keep companies
12 honest?

13 THE PANEL MEMBER: I don't think so.

14 MS. SMITH: Okay. Why not?

15 THE PANEL MEMBER: I think there's enough lawsuits
16 going around as it is.

17 MS. SMITH: Okay. Fair enough. And that's all I
18 have for you, sir. I appreciate it.

19 All right. Now, I bet we can agree on this: We've all
20 been accused by a showing of hands of doing something we
21 didn't actually do. Everybody been in that situation? This
22 is aside from lawsuits and litigation and stuff like that. We
23 agree we've all been accused of doing something we didn't do.
24 Right?

25 You raised your hand first, Juror No. 7, Mr. Jester, and

1 I have not yet spoken with you. So when you were accused of
2 doing something you didn't do, what did you do?

3 THE PANEL MEMBER: I was accused of sending a rail
4 car out full of product that was marked empty.

5 MS. SMITH: Okay. And that couldn't be -- that was
6 not the truth?

7 THE PANEL MEMBER: That was not the truth.

8 MS. SMITH: Okay. So how did you handle that?

9 THE PANEL MEMBER: Well, I was -- had to go to the
10 HR department and explain what I did and how I did it, and
11 that the car was empty when I sent it out.

12 MS. SMITH: And did it escalate from the HR
13 department?

14 THE PANEL MEMBER: No.

15 MS. SMITH: Okay. Had it escalated, would you have
16 head hesitated to go on and defend yourself?

17 THE PANEL MEMBER: No.

18 MS. SMITH: And do you fault the company like
19 Samsung for coming in this courtroom and defending itself?

20 THE PANEL MEMBER: No.

21 MS. SMITH: I appreciate that, sir. Thank you.

22 Juror No. 5, Mr. Henry. I don't think we've heard from
23 you. You raised your hand a little about being accused with
24 the rest of us of something we didn't do. Tell us about that.

25 THE PANEL MEMBER: I didn't raise my hand. I was

1 scratching my head.

2 MS. SMITH: I'm sorry. That's kind of like going to
3 an auction, you know, where you want to sit real still. So
4 okay. Well, I apologize. Have you led a charmed life where
5 you have not been accused of doing something? I'm talking
6 about taking the last roll of toilet paper and not putting a
7 new one in.

8 THE PANEL MEMBER: Well, everybody's been accused of
9 something they didn't do, so --

10 MS. SMITH: That's where I'm heading, Mr. Henry. So
11 when that happens, do you hesitate to speak up and defend
12 yourself?

13 THE PANEL MEMBER: No. You have to defend yourself
14 especially if you know you're innocent of doing it, so --

15 MS. SMITH: Okay. And if in Samsung's heart of
16 hearts they think they're not -- they're not infringing, do
17 you blame them for coming in this courtroom and defending
18 themselves?

19 THE PANEL MEMBER: No, I don't blame them at all.

20 MS. SMITH: All right. Thank you, sir. And I'm
21 sorry for calling on you.

22 All right. Mr. Baxter gave you an overview of the case,
23 and Judge Gilstrap allows each side to do that--give you an
24 overview of what's to come if you're fortunate enough to get
25 chosen.

1 And there is one thing I can agree on, it might be the
2 only thing with Mr. Baxter, and that's this is a case about
3 memory. We've heard a little bit about that. What I'm not
4 going to do is -- is put up the pictures and things and -- and
5 walk you through that.

6 I will tell you that Samsung is going to bring a mountain
7 of evidence, witnesses and experts, to talk about the details
8 better than I can, quite frankly, about the different type of
9 memory products that Samsung designs and makes and
10 manufactures.

11 For this purpose today, what I want your take-away to be
12 is that it is Samsung's position, and make no mistake from
13 this conversation this morning, that it does not, does not,
14 infringe, and that these patents that you're going to hear
15 about are invalid.

16 And so what we heard from Judge Fogel in the patent video
17 and what we heard from Judge Gilstrap is that this is
18 Samsung's opportunity to come and defend itself from these
19 allegations. So if you're lucky enough to be chosen for this
20 case, you're going to be -- it will be up to you to decide
21 whether Samsung's been wrongfully accused.

22 Now, I want to talk about the order of trial real quick,
23 and I'm going to pick on Mrs. Griffin because -- and I'm going
24 to tell you why I'll pick on you because you said you have
25 four children and 10 grandchildren. All right, Mrs. Griffin?

1 All right.

2 So in this case, the Plaintiff's always going to go first
3 and they're going to say, there's good lawyers, there's smart
4 lawyers, they're going to say things that make a lot of sense,
5 they're going to show you a lot of things. And then you have
6 to -- you kind of have to wait and hold your judgment for
7 Samsung to go. We will always go second. That's the way the
8 Court has it structured.

9 You know where I'm going with this?

10 So when you -- when you raised your four kids and now
11 you're raising your 10 grandkids, if your household is like
12 mine, something happens, there's a dust-up. Right? And there
13 are two of them, and they run as fast as they can to be the
14 first one to tell you what happened. Is that correct?

15 THE PANEL MEMBER: Pretty much, yes.

16 MS. SMITH: You've experienced that?

17 THE PANEL MEMBER: Yes.

18 MS. SMITH: And what do you do? Do you -- do you
19 take the word of the one that gets to you first or do you
20 listen to both sides of the story?

21 THE PANEL MEMBER: Well, you can't take the first
22 one's word because that one's always the tattletale.

23 MS. SMITH: I have that kid in any house as well,
24 so -- I do. So -- and I'm not making light of anything that's
25 going to go on in this courtroom. But, in the same way, can

1 you hold judgment, can you wait until you hear both sides of
2 the case before -- before you would make a final decision?

3 THE PANEL MEMBER: I think that's what you have to
4 do. You have to weigh both sides before the decision is made.

5 MS. SMITH: Okay. I appreciate it, Mrs. Griffin.
6 Thank you.

7 Mrs. Jordan, we heard a little bit from you from Mr.
8 Baxter. You said that you sat -- first off, do you agree with
9 Mrs. Griffin, that it's important to wait to hear from both
10 sides?

11 THE PANEL MEMBER: Yes, ma'am.

12 MS. SMITH: You did not raise your hand when
13 you -- when you -- when we were talking about who had -- who
14 was tech savvy, but you did raise your hand and said you spent
15 a ton of time in front of your computer at the driver's
16 license office. Is that correct?

17 THE PANEL MEMBER: Yes.

18 MS. SMITH: Are you doing mostly data entry or is it
19 something beyond that?

20 THE PANEL MEMBER: It's mostly data entry. We
21 switch off. We rotate. We do drive tests so I'm -- you're
22 outside running around, driving crazy people, and issuing
23 driver's licenses.

24 MS. SMITH: I have a nine-year-old --

25 THE PANEL MEMBER: I have a 10-year-old.

1 MS. SMITH: -- and a 11-year-old. They're headed
2 your way pretty soon when you talk about crazy people. I will
3 not be giving them Driver's Ed.

4 All right. Thank you, ma'am. I appreciate that.

5 All right. We saw -- Mr. Baxter asked you-all if you had
6 experience with Samsung products, and we saw a bunch of hands.
7 Can I see that hand again? Anyone -- refrigerator, phones,
8 everything? Almost everyone except for Juror No. 7. Raise
9 your hands again. I apologize. And Mr. Robles, Juror No. 10.
10 Juror No. 1.

11 All right. A little bit different question. I'm looking
12 for people that might say, you know, Samsung's kind of
13 starting out from behind in this case, because I had a
14 product, and whether it's a warranty issue or another type of
15 issue, it's not doing it for me. I just don't care for their
16 products. Is anybody in that situation? You've had an issue
17 with whether it's an issue with a fridge -- I've got Juror No.
18 30 I'll talk to in a moment.

19 Anyone else that's had an issue with a Samsung product?
20 Okay. Juror No. 11, Mr. Fuller. Tell me about that.

21 THE PANEL MEMBER: Well, I work for Lowe's, and we
22 sell the Samsung products. So you have to deal with the
23 warranty. You know, when they come back for warranty or
24 anything like that, sometimes it's hard to deal with getting
25 the warranty taken care of or they want to -- you know, they

1 don't want to deal with it and say, well, it's up to the store
2 to do something about it. Sometimes the store can't do
3 nothing about it. It's just a warranty to, you know, on all
4 the Samsung parts, sometimes it's hard to get.

5 Sometimes you get out there, you deliver them, set them
6 up, I sell them, you know. Sometimes they just don't get the
7 cooperation from Samsung that you can get them over the phone,
8 you know, dealing with corporate, you know, different people
9 processes. It's a big line you got to go through to deal with
10 all that.

11 MS. SMITH: And I have been -- not necessarily
12 Samsung, but I have been on hold with various, you know,
13 warranty lines and things like that in my life. So I
14 understand and I appreciate your honesty.

15 You can probably guess my next question. Because of that
16 experience with Samsung, do you think you might make a better
17 juror on, say, another case where Samsung isn't the Defendant?

18 THE PANEL MEMBER: I would make a good juror in any
19 case because I deal a lot with Whirlpool, Samsung, all of the
20 big manufacturers. You can't -- you know, you can't rely on a
21 lot of it. There's problems with everything. There's
22 problems with, you know, getting the warranty and all that.
23 Dealing with all of them folks is always a difficult job to
24 do.

25 MS. SMITH: Okay. So nothing about that experience

1 that you'd carry forward, that every time I stand up in the
2 courtroom and say, I represent Samsung, you kind of think, oh,
3 here they are again, here they go.

4 THE PANEL MEMBER: Yes, ma'am, because I have to,
5 you know -- not just Samsung but any major corporation like
6 that, I've had to deal with, you know, a lot of that stuff in
7 my 19 years with Lowe's, you know, a retail business. So I
8 deal with all kinds of different products.

9 MS. SMITH: Okay. I appreciate your honesty. Thank
10 you, sir.

11 And, sir, I have one more question, I apologize, Mr.
12 Fuller. I'm sorry. I had one more question.

13 THE PANEL MEMBER: Yes, ma'am.

14 MS. SMITH: Did you say -- is there someone in your
15 household that has a patent?

16 THE PANEL MEMBER: No, ma'am.

17 MS. SMITH: No. Okay. Thank you.

18 All right. Similar question. Those of you that don't
19 have a Samsung product now but have had one in the past, is
20 there anybody like that? Everybody that raised their hand had
21 a product currently has it? No one's had a Samsung product,
22 doesn't have anymore? All right. I don't see any hands.

23 All right. We heard from Mr. Baxter. He is married to a
24 judge. He introduced his partner, Ms. Truelove. She's
25 married to a lawyer. And they also work closely with JoAnne

1 Bayliss and Todd Parrish.

2 When you walked into the courtroom today, did anyone
3 recognize Mr. Baxter by showing of hands? All right.

4 Juror No. 6, Mr. Bounds, tell me about that.

5 THE PANEL MEMBER: I just remember when he was a DA.

6 MS. SMITH: All right.

7 THE PANEL MEMBER: No dealings with him, just --

8 MS. SMITH: I was going to kind of tiptoe around
9 that next question like how did you know him as a DA. All
10 right. Did you vote for him?

11 THE PANEL MEMBER: I think I did.

12 MS. SMITH: All right.

13 THE PANEL MEMBER: It's been a long time.

14 MS. SMITH: Well, I have never held a public office,
15 and I don't have any lawyers or judges in my family. I'm the
16 first. So does Mr. Baxter kind of start out ahead because you
17 knew him --

18 THE PANEL MEMBER: No.

19 MS. SMITH: -- as a DA?

20 THE PANEL MEMBER: No.

21 MS. SMITH: Thank you, sir. I appreciate it.

22 Anyone else know Mr. Baxter? Ms. Truelove, who's sitting
23 at counsel table? Her husband, Kurt Truelove, who is a lawyer
24 in town? Mr. Todd Parrish? I saw some of you come from
25 Gilmer. Mr. Parrish lives in Gilmer. Or Ms. JoAnne Bayliss?

1 Mr. Robles, I was actually going to call on you next,
2 Juror No. 10. So, Mr. Robles, Mr. Baxter used to live in
3 Oakwood Estates. Did I get that right?

4 THE PANEL MEMBER: That's right, yes.

5 MS. SMITH: And I notice Oakwood Estates was the
6 address on your juror questionnaire. Are you neighbors or
7 were you neighbors?

8 THE PANEL MEMBER: Yes, yeah. We're neighbors,
9 yeah.

10 MS. SMITH: All right.

11 THE PANEL MEMBER: That's about it.

12 MS. SMITH: Well, you say, that's about it. Should
13 it make me nervous if I choose you for this jury and opposing
14 counsel is your neighbor?

15 THE PANEL MEMBER: Maybe -- maybe the evidence would
16 make me nervous.

17 MS. SMITH: I'm sorry?

18 THE PANEL MEMBER: Maybe the evidence, not -- not
19 the relationship.

20 MS. SMITH: Well, tell me about that. Why should
21 the evidence make me nervous?

22 THE PANEL MEMBER: I don't know. I'm just curious
23 to see what you've got. It's interesting.

24 MS. SMITH: Okay. But nothing about -- you haven't
25 started forming an opinion about the case as we stand here

1 today.

2 THE PANEL MEMBER: Not currently.

3 MS. SMITH: Okay. All right. What about Ms.

4 Bayliss? I think she still lives out at Oakwood. Do you know
5 her?

6 THE PANEL MEMBER: I'm not sure.

7 MS. SMITH: Okay.

8 THE PANEL MEMBER: Haven't heard that name before.

9 MS. SMITH: Okay. All right. Thank you. Thank
10 you, sir.

11 And I think -- I think Mr. Baxter actually asked this.
12 Nobody had heard of Netlist before coming into the courtroom
13 today. I see a bunch of heads shaking no.

14 All right. I've got a question, and I call it my where
15 there's smoke, there's fire question. Plaintiff filed this
16 lawsuit. Is there anyone out there thinking, you know, they
17 filed the lawsuit, they paid a couple of hundred bucks, so
18 Samsung must have done something wrong? Anybody have that
19 thought? Nobody.

20 All right. Juror No. 15, Mr. Epting?

21 THE PANEL MEMBER: Yes, ma'am.

22 MS. SMITH: All right. Do you have -- what do you
23 have to say about that statement? You know, we're here in the
24 courtroom, the Judge just said it's an important case, you
25 know, Samsung must have done something wrong. Do you think

1 that argument has any merit?

2 THE PANEL MEMBER: I think so, yes.

3 MS. SMITH: All right. Tell me about that.

4 THE PANEL MEMBER: I mean, why would they -- why
5 they spend money unless they didn't think they were right?

6 MS. SMITH: So because Samsung is showing up and
7 defending itself, you think --

8 THE PANEL MEMBER: Same thing. I mean, they're here
9 because they think they're right. So --

10 MS. SMITH: Okay. Do your thoughts cause you --

11 THE PANEL MEMBER: No.

12 MS. SMITH: -- to start out leaning either
13 direction?

14 THE PANEL MEMBER: No.

15 MS. SMITH: Okay. Now, Mr. Epting, you -- you're a
16 mechanical inspector out at Eastman.

17 THE PANEL MEMBER: Westlake, which is inside
18 Eastman, yes, ma'am.

19 MS. SMITH: Okay. I still get them confused. Mr.
20 Baxter talked about, you know, Eastman having patents and
21 companies having patents and not hesitating to protect them.
22 Westlake's not the only one that has patents in the industry.
23 Right?

24 THE PANEL MEMBER: Correct.

25 MS. SMITH: And so, I mean, if one of the other

1 industry competitors accused Westlake of patent infringement,
2 do you think -- do you think that Westlake would stand up if
3 they're -- in their heart of hearts they knew they didn't do
4 it and defend themselves?

5 THE PANEL MEMBER: Most definitely.

6 MS. SMITH: You don't think Westlake would hesitate
7 to come into this courtroom, would you?

8 THE PANEL MEMBER: That's correct.

9 MS. SMITH: Thank you, sir. Appreciate it.

10 THE COURT: Five minutes remaining.

11 MS. SMITH: Thank you, Your Honor.

12 Now, he waited until the end, but I think what we heard,
13 and I wrote it down, I think we heard that the Plaintiff is
14 going to demand \$400 million in this case. And -- and make no
15 mistake, Samsung has a lot to say about that. They're going
16 to respond.

17 But somebody said to me once, they said, well, you know,
18 if the Defendant responds and the Defendant talks about
19 damages and challenges the Plaintiff's number, they're
20 admitting that they owe something just by challenging the
21 number. Does anyone -- does anyone buy into that, see any
22 truth in that? I see some head nodding.

23 Juror No. 16, I haven't had an opportunity to talk to you
24 yet, Mr. Enloe.

25 THE PANEL MEMBER: Yes, ma'am.

1 MS. SMITH: You had some prior civil service, too,
2 didn't you?

3 THE PANEL MEMBER: Yes, in Gilmer.

4 MS. SMITH: Civil court in Gilmer?

5 THE PANEL MEMBER: Actually it was a criminal.

6 MS. SMITH: Okay. Okay. Thank you, sir.

7 Now, I'll give you a hypothetical. You're out on the
8 courthouse square driving around, going five miles an hour.
9 Right? You get in a fender bender. You say, I have the right
10 of way. The other guy says, I have the right of way. You're
11 squabbling about that. But he says -- remember we're going
12 five miles an hour.

13 Keep all these billboards we see around for personal
14 injury lawyers in your head for this. Okay?

15 He says, you harmed me to the extent of a million
16 dollars. Would you say -- you've seen the billboards, haven't
17 you?

18 THE PANEL MEMBER: Yeah.

19 MS. SMITH: Would you say, you know, I had the right
20 of way, I'm not at fault, but you'd also take issue with that
21 million dollars, wouldn't you?

22 THE PANEL MEMBER: That I would take the million
23 dollars?

24 MS. SMITH: You would take issue with him saying --

25 THE PANEL MEMBER: Oh, yeah.

1 MS. SMITH: -- in a five-mile-an-hour accident, you
2 owe a million dollars?

3 THE PANEL MEMBER: Yeah.

4 MS. SMITH: You see where I'm going with this,
5 because Samsung is going to say, We absolutely don't infringe,
6 and your patents aren't valid, but we're going to spend some
7 time talking about that \$400 million number, too. So you
8 don't fault Samsung for taking issue with that number, do you,
9 sir?

10 THE PANEL MEMBER: No. The number's large. It has
11 to be proven.

12 MS. SMITH: Thank you, sir. I appreciate it.

13 And Juror No. 17, I want to talk to you very quickly
14 because I have not yet. Do you agree with your Juror No. 16,
15 if the number is large they absolutely have to prove it?

16 THE PANEL MEMBER: Yes.

17 MS. SMITH: And you don't fault Samsung for taking
18 issue with that number, do you?

19 THE PANEL MEMBER: No.

20 MS. SMITH: Okay. Mr. Baxter -- when we talk about
21 proof, Mr. Baxter talked about the preponderance, and both the
22 Judge and Mr. Baxter agree that it's Plaintiff's burden of
23 proof. Did you hear both of them agree to that?

24 THE PANEL MEMBER: Yes.

25 MS. SMITH: Now, what that means is that the

1 Defendant can come in--and this isn't going to happen; we're
2 going to bring a mountain of evidence--but what it means is I
3 could sit on my hands and do nothing and win the case if
4 Plaintiff didn't meet its burden.

5 THE PANEL MEMBER: Right.

6 MS. SMITH: And you take no issue with that?

7 THE PANEL MEMBER: Correct; not at all.

8 MS. SMITH: Thank you so much, ma'am.

9 THE PANEL MEMBER: You're welcome.

10 MS. SMITH: All right. The Judge has told me that
11 my time is short, so two more questions.

12 Is there anybody sitting out there thinking, you know,
13 I'm already, for whatever reason -- Ms. Smith didn't ask me
14 the right questions or didn't visit with me long enough. Is
15 there anyone thinking, I'm already kind of starting to lean
16 towards Netlist in this case? Do I see a hand?

17 THE COURT: You have one minute.

18 MS. SMITH: Thank you, Your Honor. I have one more
19 question.

20 Is there anybody out there thinking -- and I've tried my
21 hardest to visit with each of you. Mr. Stewart, I already
22 knew you. I apologize for not visiting with you further.

23 Is there anybody sitting there thinking, You know, if Ms.
24 Smith just asked me this question--typical lawyer, she didn't
25 ask the right questions--if she just asked me this one

1 question, I'd tell her that I am not the right person for this
2 case? Anybody have that thought?

3 All right. I appreciate your time this morning. Again,
4 thank you on behalf of Samsung, and I look forward to working
5 with the eight of you that are lucky enough to get chosen.

6 Thank you, Your Honor.

7 THE COURT: All right. Counsel, approach the bench,
8 please.

9 (The following was had outside the hearing of the
10 jury panel.)

11 MR. BAXTER: Your Honor --

12 THE COURT: Ms. Smith, we're waiting.

13 Mr. Baxter, does the Plaintiff have any challenges for
14 cause?

15 MR. BAXTER: No, Your Honor.

16 THE COURT: Ms. Smith, does the Defendant have any
17 challenges for cause?

18 MS. SMITH: No. 12, and that's it, Your Honor.

19 THE COURT: Okay. Now, when I asked the panel to
20 begin with about inability to be present during the trial, 20,
21 21, and 23 raised their hands. During questioning there was
22 some discussion with Ms. Kelso, No. 3, and Mr. Bounds, No. 6,
23 about their difficulties if they were selected and required to
24 serve throughout the trial. Interestingly, they didn't raise
25 their hands when I asked the question, but it came out in the

1 examination.

2 My intention is to bring Ms. Kelso and Mr. Bounds up and
3 talk about that and make sure there's not something there
4 that's a serious impediment to their willingness or their
5 ability rather to serve.

6 With only one challenge for cause, I don't think we get
7 to 20, 21, or 23. Does anybody see that differently?

8 MR. BAXTER: No, Your Honor.

9 THE COURT: I'm happy to bring them up. But if we
10 can't reach them, there's no reason to bring them up. If I
11 were to excuse 3, 6, and 12, that still doesn't get us to 20.
12 Everybody agree?

13 MR. BAXTER: Yes, Your Honor.

14 MS. SMITH: That's correct.

15 THE COURT: Then I'll bring those three.

16 MR. SHEASBY: Your Honor, I had a point of
17 clarification --

18 THE COURT: What's that, Mr. Sheasby?

19 MR. SHEASBY: -- which is if they don't want to
20 indicate that they want a for-cause exclusion, I'm concerned
21 that asking them if they want a for-cause exclusion would
22 motivate them to want a for-cause exclusion.

23 THE COURT: I'm not sure I understand your question,
24 but I always ask counsel if they have any challenges for
25 cause.

1 MR. SHEASBY: No, no. The -- the burden. I said
2 for cause, but there was two people who didn't indicate they
3 had a burden that would prevent them from serving, and I know
4 -- I thought you were going to call them up and ask them about
5 having a burden from serving.

6 THE COURT: I intend to call up No. 3 and No. 6
7 because they gave answers that indicated that it might be
8 difficult for them to serve, but those two members of the
9 panel did not raise their hands when I asked about it. I
10 still intend to bring them up. I'm disclosing that in case
11 anybody has any objection or problem with that. I gather
12 nobody has a problem with me talking to those two members.

13 MS. SMITH: No objection, Your Honor.

14 MR. BAXTER: No, Your Honor.

15 THE COURT: Take your seats, please.

16 (The following was had in the presence and hearing
17 of the jury panel.)

18 THE COURT: Ladies and gentlemen, I'm about to
19 excuse most of you for a recess. There are a few of you I'm
20 going to ask to stay behind so that I can visit with you here
21 briefly at the bench.

22 Those of you that I don't ask to stay behind, when I
23 excuse you for recess, if you'll exit the courtroom through
24 the double doors in the back. As you go through those double
25 doors, if you go to the left and go around the corner, you'll

1 find two important things--the water fountain and the
2 restrooms. So if you need those, they're there.

3 Also, while you're on recess, I'm going to ask that
4 nobody leave the building and nobody go to a different floor.
5 Stay on this floor and stay inside the building, please.

6 Also, while you're on recess, ladies and gentlemen, if
7 you want to talk to somebody on the panel, that's fine. If my
8 wife were here, she'd talk to a total stranger. That's just
9 the way she's made. If it was me, I probably wouldn't talk to
10 anybody. So it's up to you. If you want to talk to somebody
11 that's on the panel with you during recess, that's fine. But
12 don't talk about anything that happened in the courtroom
13 today.

14 Let me make it perfectly clear to you. You have heard no
15 evidence in this case; none whatsoever. So talk about the
16 weather, talk about your grandkids, talk about your favorite
17 sports team, talk about whatever you want to talk about, but
18 don't talk about anything that's happened in the courtroom
19 this morning.

20 Now, with that, I'm going to ask these folks to stay
21 behind and not join the rest of the panel at recess, and those
22 are No. 3, Ms. Kelso; No. 6, Mr. Bounds; and No. 12, Mr.
23 Storey. Everybody else but those three I'm going to excuse
24 for recess.

25 And if those three will just let the folks around them

1 slip by them and leave in just a minute, I'm going to ask the
2 three of you to stay in your seats and I'll talk to you one at
3 a time here at the bench.

4 So with that, ladies and gentlemen, except for those
5 three members of the panel, the rest of the panel is excused
6 for recess. And if you'll exit through the double doors at
7 this time.

8 (Whereupon, the jury panel left the courtroom.)

9 THE COURT: All right. Be seated, please.

10 Counsel, approach the bench.

11 And, Ms. Kelso, would you come up and join us, please?

12 (The following was had at the bench.)

13 THE COURT: Good morning.

14 THE PANEL MEMBER: Good morning.

15 THE COURT: This is the microphone right here,
16 Ms. Kelso. If you and I can just talk quietly into it.

17 Now, when I started this morning, I asked generally if
18 anybody on the panel would have a serious difficulty in being
19 here during the trial if they were selected, and you didn't
20 raise your hand, but during the questioning there was the
21 discussion about your job and replacing people who didn't show
22 up, and I think you said it would be hard for your employer to
23 fill the gap if you had to serve on this jury.

24 I understand all that, but is there anything that you
25 haven't told me that I need to know that would make it

1 unacceptably difficult for you to serve? Because everybody is
2 at an inconvenience when they serve, but I want to make sure I
3 don't miss anything.

4 Is there anything else about what was said that relates
5 to whether or not you could be available to serve if selected?

6 THE PANEL MEMBER: No. It would just be very hard
7 for them to fill that position for me.

8 THE COURT: The way I always look at it, it's very
9 hard for the Army to keep somebody from invading my home, and
10 it's very hard for the post office to deliver my mail rain,
11 snow, or dark of night. So we get a lot of things from the
12 government, and I always look at it, they are entitled to
13 expect a little inconvenience from us when they're called for
14 jury duty. I just wanted to make sure we covered everything.

15 THE PANEL MEMBER: Yes.

16 THE COURT: I'm going to let you join the rest of
17 the crowd outside, Ms. Kelso. Just don't talk about anything
18 we discussed.

19 THE PANEL MEMBER: Okay. Yes, sir. Thank you.

20 THE COURT: Thank you.

21 (The panel member left the courtroom.)

22 THE COURT: I'm not going to excuse Ms. Kelso.
23 Mr. Bounds, would you come up, please?

24 THE PANEL MEMBER: Yes, sir.

25 THE COURT: How are you, sir?

1 THE PANEL MEMBER: I'm great. You?

2 THE COURT: This is our microphone. If we can just
3 talk quietly here.

4 I heard you tell everybody in the room that jury service
5 is costing you \$600 a day.

6 THE PANEL MEMBER: Plus I'm the only one that does
7 what I do where I'm at.

8 THE COURT: I understand, sir. And believe it or
9 not, there was a point in my life where I was self-employed,
10 and if I wasn't doing it, it wasn't getting done.

11 THE PANEL MEMBER: You actually did business for me.

12 THE COURT: Yes, sir.

13 Understanding that, is there anything else about the
14 possibility of you being selected on this jury that I need to
15 know about?

16 THE PANEL MEMBER: Like I said, I'm just the only
17 one that does what I do at work and, like I said, it's -- you
18 know, it costs me like six grand this week if I was here all
19 week.

20 THE COURT: Let me ask you this just as honestly as
21 I can, Mr. Bounds. If you are selected, are you going to
22 spend the whole time in that jury box worrying about what
23 you're not doing, or are you going to be able to listen to
24 the evidence?

25 THE PANEL MEMBER: I'll listen to the evidence, but

1 that don't mean that other stuff still ain't on your mind.

2 THE COURT: I understand, and that's a fair
3 statement.

4 Mr. Baxter, do you have any questions for Mr. Bounds?

5 MR. BAXTER: No, Your Honor.

6 THE COURT: Ms. Smith?

7 MS. SMITH: No, Your Honor.

8 THE COURT: Mr. Bounds, I'm going to let you join
9 the rest of the group outside. Just don't discuss what we
10 talked about in here. Thank you.

11 (The panel member left the courtroom.)

12 THE COURT: I'm not going to excuse Mr. Bounds.

13 Mr. Storey, would you come up?

14 How are you, sir?

15 THE PANEL MEMBER: How are you doing?

16 THE COURT: Good to see you.

17 This is our microphone. We're just going to talk quietly
18 here.

19 Mr. Storey, I recall that you served on a jury in this
20 court before.

21 THE PANEL MEMBER: Yes, sir.

22 THE COURT: A couple of years ago.

23 THE PANEL MEMBER: Two years ago.

24 THE COURT: Right. And the Defendant in that case
25 was Samsung. Right?

1 THE PANEL MEMBER: Yes.

2 THE COURT: And the jury in that case found against
3 Samsung and awarded a big sum of money. Right?

4 THE PANEL MEMBER: Yes.

5 THE COURT: Are you going to be able to start with a
6 fresh slate in this case if you're selected on this jury and
7 not let what you experienced in that other trial influence you
8 in any way, or are you concerned because of that experience
9 that you might lean a little bit toward the Plaintiff and
10 against Samsung here because you were on the jury that found
11 against them before?

12 THE PANEL MEMBER: Yes, sir.

13 THE COURT: You think you might?

14 THE PANEL MEMBER: I might.

15 THE COURT: Okay. Mr. Baxter, do you have any
16 questions of Mr. Storey?

17 MR. BAXTER: Mr. Storey, you have not heard any
18 facts now and you haven't made up your mind.

19 THE PANEL MEMBER: I haven't made my mind up, no.

20 MR. BAXTER: I believe in that case you found some
21 patents invalid, did you not?

22 THE PANEL MEMBER: Yes.

23 MR. BAXTER: Okay. Do you feel like you can start
24 out with both sides being equal and put on our proof and they
25 put on their proof and you listen to all that?

1 THE PANEL MEMBER: I can start fresh.

2 MR. BAXTER: Okay. You think you'll be fair to
3 Samsung just like you were in that other case?

4 THE PANEL MEMBER: I'll try.

5 THE COURT: Ms. Smith, do you have any questions?

6 MS. SMITH: Yes, sir.

7 Good to see you again.

8 THE PANEL MEMBER: Yes, ma'am.

9 MS. SMITH: I didn't know -- I was the counsel in
10 that case. Do you recall that?

11 THE PANEL MEMBER: Yes, you were, yes.

12 MS. SMITH: Pleasure to see you.

13 We can't leave our life experiences outside the courtroom
14 when we enter the court, can we?

15 THE PANEL MEMBER: No.

16 MS. SMITH: And you bring your life experiences with
17 you when you enter the court.

18 THE COURT: You-all speak up a little bit, please.

19 MS. SMITH: One of your life experiences is being
20 involved in that Solas case, which there was a \$62 million
21 award. Does that sound about right?

22 THE PANEL MEMBER: Yes.

23 MS. SMITH: Okay. And if you were chosen in this
24 case, when you go back to deliberate, it would be impossible
25 to leave that experience behind you because you have

1 experience in deliberating on a patent case -- patent
2 infringement case against Samsung. Correct?

3 THE PANEL MEMBER: Correct.

4 MS. SMITH: Thank you, sir.

5 THE COURT: Let me just ask you this, Mr. Storey.
6 Is there any doubt in your mind you could be completely fair
7 to both sides, or is that prior experience going to make any
8 difference about how you would serve in this case? You just
9 be as honest with me as you can.

10 THE PANEL MEMBER: I think it would make a
11 difference because it would be in my mind.

12 THE COURT: All right, sir. Thank you for your
13 honesty. I'm going to let you join the rest of the panel
14 outside.

15 THE PANEL MEMBER: Yes, sir.

16 THE COURT: Just don't discuss anything we talked to
17 in here.

18 THE PANEL MEMBER: Thank you very much.

19 THE COURT: Thank you very much.

20 MS. SMITH: Thank you, sir.

21 (The panel member left the courtroom.)

22 THE COURT: I'm going to grant the Defendants'
23 challenge for cause and excuse Mr. Storey.

24 MS. SMITH: Thank you, Your Honor.

25 THE COURT: Okay. That's one, we're going to seat

1 eight, each side gets four strikes, so we should strike
2 through 17. Does anybody disagree?

3 MR. CORDELL: That's correct.

4 THE COURT: All right. How long do you need to
5 strike your list, Counsel?

6 MR. BAXTER: About 20 minutes.

7 MS. SMITH: That would be wonderful.

8 THE COURT: All right. Have your list to
9 Ms. Brunson by 20 minutes until 12:00. Okay? All right.
10 Thank you.

11 (The following was had in open court.)

12 THE COURT: While counsel exercise their peremptory
13 challenges, the Court will stand in recess.

14 (Brief recess.)

15 THE COURT: Be seated, please.

16 Counsel, approach the bench, please.

17 (The following was had outside the hearing of the
18 jury panel.)

19 THE COURT: Is there anything I need to take up from
20 either party before I seat the jury?

21 MR. BAXTER: Not that I know of.

22 MR. CORDELL: No, Your Honor. Thank you.

23 THE COURT: All right. Then take your places.

24 (The following was had in the presence and hearing
25 of the jury panel.)

1 THE COURT: All right, ladies and gentlemen. If you
2 will listen as your name is called and come forward to the
3 jury box.

4 Let me explain a little bit about the logistics of this.
5 We're going to seat eight jurors to be the jury in this case.
6 I'll ask that whoever is the first person called, if you'll
7 come forward, enter the front row of the jury box, walk all
8 the way down to the last chair and remain standing in front of
9 the last chair. Person No. 2, whoever you are, if you will do
10 the same thing--come down, go into the front row of the jury
11 box, walk down and stand in front of the third chair, leave an
12 empty chair between you, and then everyone else will do that.

13 And I want the first four members of the jury on the
14 front row of the jury box and the second four members of the
15 jury on the back row of the jury box.

16 So Juror No. 5, if you'll enter the second row or the
17 back row of the jury box, walk all the way down to the last
18 chair --

19 Not you, sir. Whoever is the -- you're No. 5 on the
20 panel; you're not No. 5 on the jury.

21 But whoever is the fifth juror called--I'll say it that
22 way--if you'll come forward and enter the second row of the
23 jury box and walk all the way down to the end and stand in
24 front of the last chair, and then juror -- the sixth juror, if
25 you'll do the same thing--stand in front of the third chair

1 from the end and leave a blank chair behind you, the result,
2 ladies and gentlemen, should be the first four jurors are on
3 the front row with a blank chair or an empty chair between
4 each of you, and the second four jurors, 5, 6, 7, and 8, are
5 on the second row with an empty chair between you.

6 And those will be your positions throughout the trial.
7 You'll keep the same chair as we come and go during the
8 process of the trial itself. And all of you should remain
9 standing until everyone's in the box, and then I'll seat you.

10 So with that I'm going to ask Ms. Brunson, our Courtroom
11 Deputy, to call the names of the eight members of our panel
12 who have been selected to serve as jurors in this case.

13 THE CLERK: Christia Snelgrove, Denise Kelso,
14 William Stewart, George Bounds, Hugh Jester, Jay Wichlacz,
15 Joanna Griffin, Shannon Jordan.

16 THE COURT: All right, ladies and gentlemen. While
17 I have you standing, I'm going to ask Ms. Brunson to
18 administer the oath to you as members of the jury.

19 (Whereupon, the oath was administered by the Clerk.)

20 THE COURT: Please have a seat.

21 Those of you on the panel who were not selected to serve
22 on the jury, I'm about to excuse you and release you in just a
23 moment. But before I do that, I want to take a second and
24 tell you personally how much the Court and the Court staff
25 appreciate you being here.

1 Every one of you made a sacrifice to be here this
2 morning. Every one of you had other places to be and other
3 things to do that were important in your respective lives, and
4 you set that aside and came forward to serve as summonsed to
5 be present for the selection of the jury this morning.

6 Sir, would you hand whoever you have that for or get out
7 of the way? I'm trying to speak to the panel and you're
8 standing right in front of them. Thank you.

9 Ladies and gentlemen, the Court recognizes that you've
10 made a real sacrifice to be here, so even though you weren't
11 selected, you've rendered very real and important public
12 service by being here. And the Court appreciates it, and I'm
13 confident that the parties and counsel and everyone else in
14 the courtroom appreciates it.

15 Without ordinary citizens such as yourselves being
16 willing to step forward and answer the call to jury duty,
17 understanding that it's not convenient, it's not easy, it's
18 not always exciting, but it's necessary, and understanding
19 that, we want you to know that we appreciate and value and
20 recognize the service that you have rendered by being here.

21 Now, as you exit the courtroom through the double doors
22 and you turn to the right to go outside the building, you're
23 going to pass the Clerk's Office. If you will, make sure that
24 these plastic numbers you have attached to your clothing are
25 turned back into Ms. Clendening, and the Clerk's Office will

1 use them with the next jury.

2 Also, if you need something in writing for an employer
3 to explain why you weren't at work this morning, why you are
4 here, if you need any kind of excuse, if you need any other
5 documentation, Ms. Clendening and the Clerk's Office will be
6 happy to help you.

7 Again, ladies and gentlemen, thank you for your service,
8 and with that, you are excused.

9 (Whereupon, the jury panel left the courtroom.)

10 THE COURT: Be seated, please.

11 Ladies and gentlemen of the jury, I have some
12 instructions I need to go over with you, and I'm going to
13 release you for lunch in just a few minutes as soon as I go
14 over these instructions.

15 I do want you to understand that I've ordered the Clerk's
16 Office to provide lunch to you each day that you're serving on
17 this jury, so it will be brought to you in the jury room. You
18 will not need to leave the building and go out into the
19 community and stand in line somewhere or look for something to
20 eat. That will save us all time and it will make it more
21 convenient on you. So plan on having lunch provided to you
22 each day that you're here on jury duty by the Clerk's Office.

23 Also, while you're at lunch today, I'd like you to take a
24 moment and make sure that Ms. Clendening has a good working
25 cell phone number for you. It is possible, though not likely,

1 that we might need to reach you after hours one day or one
2 evening, and she would need a good working cell phone number
3 for that purpose. Again, it's not likely, but please take a
4 minute while you're on lunch and see that she gets that from
5 you.

6 And also, speaking of cell phones, please don't bring any
7 cell phones back to the courthouse tomorrow. And if you have
8 them with you today, leave them in the jury room when you come
9 back from lunch.

10 And that dovetails into the next instruction I need to
11 give you. You are not to discuss this case with anyone. You
12 are not to communicate with anyone in any way about this case.
13 That is a fundamental, foundational rule in the jury trial
14 system.

15 Now, at the point where you have heard all the evidence
16 and both sides have presented their closing arguments to you
17 and I have given you my final instructions on the law, and at
18 the point I say, "Ladies and gentlemen, you should retire to
19 the jury room and consider your verdict," at that point,
20 ladies and gentlemen, everything turns 180 degrees and you go
21 from not being able to discuss the case with any of the eight
22 of you, or with anyone else anywhere in the world, to being
23 required to discuss the evidence among the eight of you in an
24 effort to reach a unanimous decision about how to answer those
25 questions that are going to be included in the verdict form

1 that I'll send back with you at that time.

2 But until you've heard all the evidence, until you've
3 heard closing arguments from the lawyers and you've heard my
4 final instructions on the law, you must not discuss anything
5 about the case with each other or with anyone else anywhere
6 else.

7 And I can promise you, ladies and gentlemen, that unless
8 you live alone, when you get home tonight, wherever that is,
9 and you walk in the door, the first thing you're going to hear
10 from whoever else is there is, Tell me what happened in
11 federal court in Marshall today. Don't even try to answer
12 that question because you'll almost unavoidably violate my
13 instruction if you do. Simply blame it on me. Say, That very
14 stern federal judge told me not to talk about this case until
15 he released me and the case was over and that's what I'm going
16 to do. Please just blame it on me. But don't discuss or
17 communicate about the case with anyone in any way.

18 And when I say don't discuss it, don't communicate about
19 it, I mean that in the broadest possible sense. Don't talk
20 about it, don't email about it, don't send text messages. And
21 if any of you are users of social media, don't post anything
22 on Facebook and don't tweet on Twitter and don't use any other
23 social media platform. Don't communicate about it in any way
24 with anyone. It's absolutely essential.

25 And let me explain to you the reason that's such an

1 important rule. Because when you go back in the jury room
2 after all the evidence is presented and you are deliberating
3 on your verdict, which is a set of questions that I'll give
4 you at that time in writing that you're to answer, it is
5 absolutely essential that the only information you have to
6 draw upon in answering those questions is what's presented in
7 this courtroom during this trial from the witnesses who are
8 sworn and testify under oath and are subject to cross
9 examination, and the documents and exhibits that the Court has
10 admitted into evidence under the rules of evidence. That must
11 be the only evidence that you consider, and you must have no
12 other outside information or influences or information. And
13 that's why it's fundamental.

14 And if this instruction is ever violated, you need to
15 understand that it risks and jeopardizes the entire
16 proceeding, and there is the possibility that I might have to
17 declare a mistrial and dismiss all of you and select a new
18 jury from a new group of people and start all over again, and
19 there would be literally thousands of hours and many, many
20 thousands of dollars in wasted time and resources by the
21 parties and the Court and the entire process. So there are
22 huge consequences to this, potentially.

23 So please -- and please be aware, I'm probably going to
24 repeat this instruction over and over during the trial just
25 because it is so essential and fundamental. Don't communicate

1 with anyone in any way about the case.

2 And as a part of that, you're not to do any outside
3 research, again for the same reason--the only information you
4 should have before you when you answer the questions in the
5 verdict form is the sworn testimony of the witnesses and the
6 exhibits that have been introduced over the course of the
7 trial that the Court has found are admissible under the
8 Federal Rules of Evidence. That's it.

9 So don't do any outside research. Don't get on the
10 internet and pull up any of these parties or these lawyers or
11 these concepts or anything. I mean, don't go to the library
12 and pull a book off the shelf. Don't get an encyclopedia.
13 Just don't do any research of any kind. Again, it goes back
14 to that same fundamental principle that the sole universe of
15 the information that you must base your decisions on must come
16 from this courtroom during the trial and nowhere else.

17 Also, ladies and gentlemen -- and I'll explain to you
18 that's why I don't want you to have a cell phone during the
19 trial with you, because it's just a small computer and it's
20 very tempting to say, I didn't understand what that lawyer
21 meant by that; let me Google it real quick. That's
22 impermissible. And I'm going to try to keep the temptation
23 away from you by asking you not to bring smartphones, tablets,
24 smartwatches, any kind of device like that that you could
25 access the internet or any research sources from.

1 Now, you're going to see the lawyers using those same
2 kind of electronic devices during the trial, and they're under
3 strict instructions from me to make sure that they don't
4 sound, alarm, ring, or disrupt the process. But other than
5 that, those are tools of the trade now.

6 When some of us got out of law school, it was a legal pad
7 and pen. Now it's an iPad and laptop and all kind of
8 electronics devices. And that's fine, as long as they're
9 silent. But they have a reason to have them, and don't feel
10 anything negative toward the fact that you may see them with
11 smartphones in their hands that you're not permitted to have,
12 but there's a reason why behind all that.

13 Also, ladies and gentlemen, I don't think this is likely
14 to happen, but it's not outside the realm of possibility and I
15 need to make you aware of it. It is possible that over the
16 course of this trial some third party, some outside source,
17 could attempt to contact you and influence you about how you
18 might decide the issues in this case. I don't think that's
19 likely, but there are no unimportant cases that make it to a
20 jury trial in our system, so it's possible.

21 If you should have any contact by anybody that you think
22 is unusual, awkward, improper in any way, if you have any
23 suspicions about anything like that, you should immediately
24 inform Ms. Clendening, she'll let the Court know, and the
25 Court will deal with it. Again, I don't think it's likely,

1 but I need to tell you it's within the realm of possibility.

2 One more thing, ladies and gentlemen. During the course
3 of this trial you're going to be coming and going each day.
4 There's one set of steps that come in the front door, and you
5 are invariably going to pass in the hallways and on the
6 sidewalks coming and going, perhaps in the parking lot, one or
7 more of these lawyers, one or more of these witnesses, some of
8 the support teams that are helping each side.

9 When that happens, none of those people are going to
10 speak to you. They may walk right by you and ignore you. And
11 when that happens, don't hold that against them and don't
12 think they're being rude. Understand that those are my
13 instructions to them; because, again, the only source of
14 information that you must have in deciding the issues about
15 the facts in this case must come from the evidence presented
16 over the course of the trial for this courtroom and nowhere
17 else.

18 So if one of these lawyers or one of these paralegals or
19 someone else associated with either or both sides walks right
20 past you and doesn't say, Good morning, doesn't speak, doesn't
21 say, How are you today, they're not friendly and gregarious
22 like most folks in East Texas are, don't hold it against them.
23 Don't think they're being rude. Understand they're just
24 simply following the Court's instructions and that's the
25 reason behind that.

1 All right. With those instructions, ladies and
2 gentlemen, I'm going to excuse you for lunch. We're going to
3 come back about 10 minutes until 1:00, and at that point we'll
4 begin with my preliminary instructions on the law.

5 Following that, you'll hear opening statements from the
6 attorneys for the competing parties. Let me tell you, opening
7 statements are not opening arguments. They're intended to
8 give you, the jury, a roadmap of what each side expects the
9 evidence will show.

10 And then after you've heard opening statements from both
11 sides, we'll proceed with the evidence in this case. As you
12 heard during jury selection, the Plaintiff has the burden of
13 proof, so the Plaintiff goes first. The Plaintiff will call
14 its witnesses. Those witnesses will testify. And then after
15 the Plaintiff's counsel has finished their direct examination
16 of the witness, then Defense counsel will get an opportunity
17 to cross-examine those witnesses. And when the Plaintiff has
18 called all of the witnesses it intends to present and
19 Defendants have had an opportunity to cross-examine each one,
20 then the Plaintiff will rest what's called the Plaintiff's
21 case in chief.

22 When the Plaintiffs rest the Plaintiff's case in chief,
23 then we will shift to the Defendants' case in chief. And the
24 Defendants will call their witness and they'll examine them on
25 direct examination. And after they are finished with their

1 examination of each witness, the Plaintiff's lawyers will get
2 a chance to cross-examine the Defendants' witnesses. And when
3 the Defendant has called and presented all of its witnesses,
4 then the Defendants will rest the Defendants' case in chief.

5 At that point the Plaintiffs have an opportunity to call
6 what are known as rebuttal witnesses to rebut anything the
7 Defendants have shown. They are not required to call rebuttal
8 witnesses. If they choose to, they will call their rebuttal
9 witnesses, who will testify on direct under examination from
10 Plaintiff's counsel and then they'll be subject to cross
11 examination by Defendants' counsel. If they choose not to
12 call any rebuttal witnesses, then that will complete all the
13 evidence. If the Plaintiff calls rebuttal witnesses, then
14 when the rebuttal witnesses have completed their testimony,
15 that will complete all the evidence.

16 And when you've heard all the evidence, then the Court
17 will give you its final instructions, sometimes called the
18 Court's charge to the jury. And then the lawyers for each
19 side will present their closing arguments.

20 And then once each side has presented their closing
21 arguments, that's when I will say, "Ladies and gentlemen of
22 the jury, you may now retire to the jury room to deliberate on
23 your verdict." And I will send the verdict form back with
24 you, which will be a written document that will have several
25 questions in it that you then must discuss the evidence

1 regarding those questions among yourselves. Prior to that
2 time, you must not discuss any of the evidence or anything
3 about the trial among the eight of you or with anyone else.

4 Once you've reached a unanimous decision about the
5 questions in the verdict form, then your foreperson that you
6 will select from among yourselves will fill in your unanimous
7 answers to those questions, sign it, date it, and inform the
8 Court Security Officer that you've reached a verdict. And at
9 that time I'll bring you back into the courtroom and receive
10 your verdict.

11 So that's a very high-level structural explanation of how
12 the trial will go.

13 One other thing I want to mention and then I'll release
14 you for lunch. In my time on the bench here--as I told you,
15 I'm going on my 12th year now--in my time on the bench, I have
16 had jurors tell me time and time again, Your Honor, we would
17 rather start early and go late each day and be away from our
18 homes and our families and our businesses a shorter number of
19 days than if we start late each morning and quit early each
20 afternoon and it takes twice as many days away from our
21 families and our businesses and our other obligations. And
22 that's the practice I follow.

23 So we're going to start each morning, ladies and
24 gentlemen, at 8:30. And I'm going to ask you to plan your
25 travel from your homes back and forth so that you can be

1 assembled in the jury room each morning and ready to come
2 into the courtroom by 8:30. You ought to plan to check the
3 weather. You ought to check the driving conditions. I know
4 some of you have a distance to drive each way between your
5 homes and the courthouse, and you ought to plan to be here
6 about 8:15, get a cup of coffee and a snack before you come in
7 here, and we start at 8:30. But we're going to try to start
8 at 8:30 each morning.

9 And then we're going to break for lunch each day. Your
10 lunch will be brought to you. It will be less than an hour
11 because it's going to be brought right to you.

12 And then we'll go in the afternoon, and typically I don't
13 stop at 5:00 in the afternoon. Typically I will go closer to
14 6:00, and in rare cases we may go past 6:00.

15 Let me explain it this way. Some of these witnesses
16 you're going to hear are going to be on the witness stand a
17 long time. And if we've got a witness who's on the witness
18 stand and they're going to testify for an hour-and-a-half and
19 we get to 6:00 and they've got 10 minutes more to go before
20 they're completely finished and off the witness stand, I'm
21 probably going to let them finish that last 10 minutes and get
22 off the witness stand and start fresh with another witness the
23 next day.

24 So it's not an exact science, but don't plan on us
25 stopping at 4:30 or 5:00 each day. We'll go later than that.

1 And I'll just have to gauge it each day as to when we stop.
2 But in a general sense, and for those that are in your homes
3 that need to know what your general schedule's going to be
4 during that trial, let them know that you probably won't be
5 leaving the courthouse in Marshall until 5:30 or 6:00 or
6 thereabouts each day.

7 And if we will work those longer days, then we can finish
8 this case next week. If we start at 10:00 and we stop at 4:00
9 each day and I give you an hour-and-a-half for lunch, it will
10 take us two weeks or three weeks to try this case. And,
11 again, my experience has been that folks in East Texas would
12 rather have a longer day and be through sooner than stretch
13 this out over twice as long by having a less demanding
14 timetable each day.

15 So that's what I'm planning on and that's what you
16 should plan on, and I just wanted to let you know about that
17 in advance.

18 So with that, ladies and gentlemen, follow all my
19 instructions, including not to discuss anything about the
20 case -- and by the way, you haven't heard any evidence yet.
21 The evidence is going to start when the first witness takes
22 the witness stand. So you've heard no evidence in this trial.

23 But with all the instructions I've given you, I'm going
24 to excuse you at this time for lunch. Lunch should be waiting
25 for you in the jury room.

1 And with that, ladies and gentlemen, you're excused.

2 (Whereupon, the jury left the courtroom.)

3 THE COURT: Be seated, please.

4 Counsel, we met in chambers shortly after 7:00 this
5 morning and had a pretty frank discussion about the level
6 of overnight disputes and problems that you had between each
7 other in preparing your demonstratives and your themes for
8 this trial. I've had some additional input by email through
9 my staff since then.

10 I need to meet with you over this lunch break and see
11 where you are and see what we can do about getting everything
12 lined out so that we don't have delays and breaks in the
13 evidence and can go forward once lunch is finished and the
14 jury comes back in.

15 Let me see lead and local counsel on both sides in
16 chambers. And with that, everyone else is excused for lunch.

17 Court stands in recess.

18 (Lunch recess.)

19 THE COURT: Be seated.

20 The Court recessed for lunch approximately two hours ago.
21 I told the jury we would reconvene in about 50 minutes.
22 That's been over an hour ago. All but 15 minutes of that time
23 has been spent with counsel in chambers going around and
24 around and around regarding late-breaking disputes, regarding
25 demonstrative slides, and other matters.

1 The parties have utterly failed to accurately,
2 professionally, and properly meet and confer and submit to the
3 Court a reasonable number of disputes in advance of the jury
4 selection and the beginning of the trial today. I can't
5 remember more late-breaking, out-of-left-field arguments and
6 disputes. I just spent a very unenjoyable hour-plus with lead
7 and local counsel in chambers arguing over multiple issues,
8 most of which were not teed up for the Court until today, some
9 as early as 2:00 or 3:00 this morning, some of it as late as
10 on the fly in real time when we were meeting in my office.

11 I'm going to deduct 30 minutes of trial time from both
12 sides. It's not the Court's fault and it's not the jury's
13 fault that we're an extra hour more or less delayed with this
14 process.

15 Now, I'm going to give the parties some guidance on some
16 of the matters that we left unresolved in chambers.

17 On the parties' competing opening statements, with regard
18 to the damages case, Samsung can tell the jury that it
19 believes a reasonable damages award, if the patents are
20 infringed, and if the patents are valid, which it hotly
21 contests, but if those conditions are met, Samsung can tell
22 the jury they believe the proper damages amount is \$8 million.

23 The Plaintiff can tell the jury in opening that they
24 believe the claims are infringed, the patents are valid, and a
25 fair and reasonable royalty award in this case is going to be

1 \$404 million.

2 Both counsel can refer to their respective experts as
3 being a source of evidence that the jury will hear from during
4 the trial to support those numbers. You're not going to argue
5 what the damages experts say. You're merely going to tell the
6 jury they'll hear from your respective damages experts and
7 they'll see these numbers as the evidence is presented.

8 Mr. Sheasby is not going to mention \$2.33 billion, and
9 Mr. Sheasby is not going to use this slide with \$1.897 billion
10 on it in opening statement.

11 Sit down, Mr. Sheasby. I may let you ask any questions
12 when I get through, but I'm certainly not going to let you
13 stand up and interrupt me in the middle of things.

14 MR. SHEASBY: I'm sorry.

15 THE COURT: There has been an ongoing challenge for
16 the Court throughout the preparation and development of this
17 trial, and that is how to try this case without it becoming a
18 trial within a trial of what happened in California, with the
19 determination of the JDLA and the alleged breach, all of which
20 is on appeal to the Ninth Circuit now.

21 And I have made it abundantly clear I'm going to do my
22 best to try this case without retrying what happened in the
23 California court, especially given that the determinations by
24 the trial court there are subject to appeal and they're not
25 final.

1 Samsung can say \$8 million is fair damages, and Netlist
2 can say fair damages are \$4.4 million [sic] and our experts
3 will explain why. That's all you're going to say in opening
4 on the damages issue, period.

5 And I do not intend -- as I sit here, I do not intend
6 this slippery slope to develop such that we get into why the
7 JDLA was terminated and who terminated it and who was right
8 and who was wrong and all the, as has been said on the record
9 many times in pretrial, who shot John. That is not relevant
10 here, and it's just an effort to castigate verbally and cast
11 aspersions on the other party.

12 There was a JDLA, the JDLA is no more, it provided
13 license protection during its existence, it does not provide
14 license protection outside its existence, and there is an
15 ongoing dispute even within the period of the JDLA as to
16 whether there were foundry products covered because those
17 foundry products, if they are foundry products, are excluded
18 from the protections and licensure of the JDLA.

19 Now, that's the story that's going to get told. And I
20 want both sides to clearly understand how the Court intends
21 this trial to go forward. And woe unto either side if you
22 stray from this guidance in open court without clearing it
23 with me at the bench first, because there are many things both
24 of you have argued about, both of you being Mr. Cordell and
25 Mr. Sheasby, there are many things you've argued about that,

1 once they're said, they can't be unsaid. And once the dam
2 breaks here, I don't know how we put it back together, and I
3 don't intend for the dam to break, and I have made that
4 consistently clear throughout this trial.

5 So if you have one scintilla of doubt that you're on
6 solid ground, you come see me at the bench before you go there
7 in front of this jury. Understood.

8 MR. SHEASBY: Yes, Your Honor.

9 THE COURT: Understood?

10 MR. CORDELL: Yes, Your Honor.

11 THE COURT: Do either of you have any questions of
12 me?

13 MR. SHEASBY: I do, Your Honor.

14 THE COURT: Then go to the podium and ask your
15 question, Mr. Sheasby.

16 MR. SHEASBY: First, I apologize for interrupting
17 Your Honor previously.

18 The question I have is on that slide that you're showing.
19 May I still show that the middle column that talks about the
20 benefit that we think is achieved by the patents without
21 showing the left-hand column?

22 THE COURT: Let me see if I can be any clearer, Mr.
23 Sheasby. With regard to your opening statement, what I intend
24 you to say about damages is that the ladies and gentlemen of
25 the jury will hear from Mr. Kennedy, he is an expert witness,

1 he will lay out a logical and believable and fair method by
2 which our damages are \$4.4 million [sic].

3 MR. SHEASBY: Understood, Your Honor.

4 THE COURT: No more, no less.

5 And you can say the same thing about your expert, Mr.
6 Cordell, and put \$8 million at the end of it.

7 And that's what the opening as to damages is going to
8 cover, the totality of it from both of you. Understood?

9 MR. SHEASBY: Thank you, Your Honor.

10 MR. CORDELL: Well, maybe I do have one question,
11 Your Honor. Our expert actually puts out two of those
12 numbers. Remember, there are two agreements. Can I mention
13 both of them or just leave it at that?

14 THE COURT: Isn't this your slide? Doesn't it show
15 8 million on one side and 4.4 [sic] on the other?

16 MR. CORDELL: That's the last one, yes, Your Honor.

17 THE COURT: Okay. Then that's what you're going to
18 say.

19 All right. As I noted, each side has just forfeited 30
20 minutes of trial time.

21 Let's bring in the jury.

22 (Whereupon, the jury entered the courtroom.)

23 THE COURT: Please be seated, ladies and gentlemen.

24 First of all, let me tell you, members of the jury, I can
25 tell time. I'm sorry. I told you 50 minutes, and we're at

1 something over two hours. Issues have arisen that the Court
2 needed to take up outside your presence, and that's why we've
3 been delayed. I will do my best to keep closer to the time
4 estimates I give you going forward.

5 Now, I have some preliminary instructions I need to give
6 you, and I'd like you to listen very carefully as I go through
7 these with you. After I've given you these preliminary
8 instructions, then counsel for the two competing parties will
9 present their opening statements to you.

10 As I told you earlier, opening statements are not
11 arguments and they are not supposed to be argumentative. They
12 are merely to give you a factual roadmap of what the parties
13 believe that their evidence is going to show you over the
14 course of this trial.

15 Now, you've all been sworn as the members of the jury in
16 this case, and as the jury, you are the sole judges of the
17 facts, and you will decide what the ultimate facts are in this
18 case. As the Judge, I will give you instructions on the law,
19 I'll decide any questions of law, evidence, or procedure that
20 arise during the trial, and I'll maintain the proper decorum
21 in the courtroom and oversee the efficient flow of the
22 evidence.

23 Let me just make this clear. The only proper source of
24 instructions on the law from you comes from me, not from the
25 lawyers, not from the parties. Nothing they tell you should

1 be taken as instructions on the law.

2 Now, at the end of the evidence, I'll give you detailed
3 instructions about the law that you are to apply, and I'll
4 give you a list of questions that you are then to answer.
5 This list of questions is called the verdict form, and your
6 answers to those questions in the verdict form must be
7 unanimous, and your unanimous answers to those several
8 questions will constitute the verdict of the jury in this
9 case.

10 Now, let me briefly touch on what this case centers
11 around. As you -- this case involves a dispute regarding five
12 separate United States patents. I know you've all seen the
13 patent video, and I will not cover that material again.

14 As you're aware, patents are either granted or denied by
15 the United States Patent and Trademark Office. You're going
16 to hear that governmental agency, and the Patent and Trademark
17 Office is an agency of the United States government, you're
18 going to hear them referred to multiple times throughout the
19 trial simply as the Patent Office, you may also hear them
20 referred to as the PTO. Those are the same thing.

21 Now, a valid United States patent, ladies and gentlemen,
22 gives the holder the right for up to 20 years from the date
23 the patent application is filed to prevent others from making,
24 using, offering to sell, or selling the patented invention
25 within the United States, or from importing it into the United

1 States without the patent holder's permission.

2 A patent is a form of property. You heard about that
3 during jury selection. A patent is called intellectual
4 property, and like all other forms of property, a patent can
5 be bought or sold.

6 Now, the violation of a patent holder's rights is called
7 infringement, and a patent holder may seek to enforce a patent
8 against persons it believes to be infringers by filing a
9 lawsuit in a federal court. And that's what we have before us
10 now.

11 The process of obtaining a patent is called patent
12 prosecution. To obtain a patent, one must first file an
13 application with the United States Patent and Trademark
14 Office, the PTO. The PTO employs trained examiners to review
15 the applications that are filed with it.

16 Each application filed with the PTO includes within it
17 something called a specification. The specification contains
18 a written description of the claimed invention telling what
19 the invention is, how it works, how to make it, and how to use
20 it. The specification concludes or ends with one or more
21 numbered sentences, and these numbered sentences at the end of
22 the patent are called the patent claims. And when a patent is
23 granted by the Patent and Trademark Office, it is the claims
24 within the patent that define the boundaries of its protection
25 and give notice to the public of those boundaries.

1 Patent claims, ladies and gentlemen, can exist in two
2 different forms referred to as independent claims or dependent
3 claims. An independent patent claim does not refer to any
4 other claim within the patent--it is, in fact, independent.
5 And it's not necessary to look at any other claim within the
6 patent to determine what an independent claim covers.

7 On the other hand, a dependent patent claim refers to at
8 least one other claim within the patent, and it includes all
9 of the elements or limitations of that other claim or claims
10 to which it refers, or as we say sometimes from which it
11 depends, as well as the additional elements or limitations set
12 forth within the dependent claim itself. Therefore, to
13 determine what a dependent patent claim covers, it's necessary
14 to look at both the dependent claim and the other claim or
15 claims to which it refers or, as we say, from which it
16 depends.

17 Now, the claims of the patents-in-suit use the
18 word 'comprising.' Comprising means including or containing.
19 A claim that includes the word 'comprising' is not limited to
20 the methods or devices having only the elements that are
21 recited in the claim, but it also includes other methods or
22 devices that add additional elements.

23 Let me give you an example. If a claim recites a table
24 comprising a tabletop, legs, and glue, that claim will cover
25 any table that contains these three structures--a tabletop,

1 legs, and glue--even if it contains other structures such as
2 leaves to expand the size of the tabletop or wheels to go on
3 the ends of the legs. That's a simple example using the word
4 'comprising' and what it means. In other words, it can have
5 other features in addition to those that are covered by the
6 patent.

7 Now, after the applicant files his or her application
8 with the PTO, an examiner is assigned by the PTO to review the
9 application and to determine whether or not the claims set
10 forth therein are patentable--that is to say, appropriate for
11 patent protection, and whether or not the specification
12 adequately describes the claimed invention.

13 In examining the application, the examiner reviews
14 certain information about the state of the technology at the
15 time the application was filed. The PTO searches for and
16 reviews this type of information that was either publicly
17 available or that might have been submitted with the
18 application by the applicant, and this type of information
19 about the state of the technology at the time is called prior
20 art. The examiner reviews this prior art to determine whether
21 or not the invention set forth in the application is truly an
22 advance over the state of the art at the time.

23 Prior art is defined by law, and I'm going to give you
24 more specific examples about it at a later time, but in
25 general prior art includes information that demonstrates the

1 state of the technology that existed before the claimed
2 invention was made or before the application for a patent was
3 filed with the PTO.

4 A patent contains within it a list of certain prior art
5 that the examiner has considered, and the items on this list
6 are referred to as the cited references. Now, after the prior
7 art search and examination of the application by the examiner,
8 the examiner informs the applicant in writing of what the
9 examiner's found and whether the examiner considers any claim
10 to be patentable, in which case it would be allowed. And this
11 writing from the examiner to the applicant is called an office
12 action.

13 Now, if the examiner rejects the claims, the applicant
14 has an opportunity to respond to the examiner to try to
15 persuade the examiner to allow the claims. The applicant also
16 has the chance to change or amend the claims or to submit new
17 claims.

18 And the papers generated in this back and forth, ladies
19 and gentlemen, between the examiner and the applicant are
20 called the prosecution history. And this process may go back
21 and forth for some time between the applicant and the examiner
22 until the examiner is ultimately satisfied and the
23 application -- that the application meets the requirements for
24 a patent, and in that case the application issues as a United
25 States patent. Or, in the alternative, if the examiner

1 ultimately concludes the application should be rejected, then
2 no patent is issued.

3 Sometimes patents are issued after appeals within the PTO
4 or to a court.

5 Now, the fact that the PTO grants a patent does not
6 necessarily mean that any invention claimed in the patent, in
7 fact, deserves the protection of a patent. While an issued
8 United States patent is presumed to be valid under the law, a
9 person accused of infringement has the right to argue in
10 federal court that a claimed invention in a patent is invalid,
11 and it's your job, ladies and gentlemen, as the jury to
12 consider the evidence presented by the parties and to
13 determine independently and for yourselves whether or not the
14 Defendant has proven that a patent is invalid; in other words,
15 has overcome the presumption of validity that attaches to each
16 issued United States patent.

17 Now, to help you follow the evidence, I'm going to give
18 you a brief summary of the positions of the competing parties.

19 As you know, the party that files or brings a lawsuit is
20 called the plaintiff. And the Plaintiff in this case is
21 Netlist, Inc., which you'll hear referred to throughout the
22 trial as simply Netlist or the Plaintiff. And as you also
23 know the party or parties against whom the lawsuit is brought
24 is called the defendant. In this case there are three
25 Defendants. They are Samsung Electronics Company, Ltd.,

1 Samsung Electronics America, Inc., and Samsung Semiconductor,
2 Inc. And you're going to hear these three Samsung entities
3 referred to throughout the trial simply and collectively as
4 Samsung, and you may hear them referred to collectively as the
5 Defendants.

6 Now, as I told you during jury selection, this case
7 involves allegations of patent infringement brought by Netlist
8 against Samsung, and as I've mentioned, there are five
9 separate United States patents at issue in this lawsuit.

10 So that you'll be clear and for the record, the first
11 United States patent at issue in this case is Patent No.
12 10,949,339. And as you were told earlier, patents are
13 commonly referred to by the last three digits of their patent
14 number. So this particular patent you'll hear referred to as
15 the '339 Patent.

16 The second patent at issue is United States Patent No.
17 11,016,918, which you'll hear referred to as the '918 Patent.

18 The third patent is United States Patent 11,232,054,
19 which you'll hear referred to as the '054 Patent.

20 The fourth patent at issue is United States Patent
21 No. 8,787,060, which you'll referred to as the '060 Patent.

22 And the fifth and last patent at issue in this case is
23 United States Patent No. 9,318,160, which you'll hear referred
24 to as the '160 Patent.

25 These patents are going to be referred to at various

1 times throughout the trial collectively as the
2 patents-in-suit. You may also hear them referred to as the
3 asserted patents. Those terms mean all five of those patents
4 collectively. And these patents generally relate to computer
5 memory technology.

6 Now, the Plaintiff, Netlist, contends that the Samsung
7 Defendants are infringing certain claims of the
8 patents-in-suit by making, using, importing, selling, or
9 offering for sale in the United States certain products that
10 include its patented technology. Netlist contends that it's
11 entitled to money damages as a result of that infringement.
12 And Netlist also alleges that Samsung's infringement is
13 willful.

14 The Samsung Defendants deny that they are infringing any
15 of the asserted claims of the patents-in-suit. They also deny
16 that any infringement has been willful. And they contend that
17 certain of the asserted claims of the patents-in-suit are
18 invalid as being obvious in the light of prior art, and they
19 also contend that certain of the asserted claims are invalid
20 because the patent's specification does not contain a
21 sufficient written description of the invention.

22 Also, ladies and gentlemen, you need to understand in
23 this case that, prior to this case being filed, the parties
24 here, Netlist and Samsung, had entered into a written
25 agreement between themselves which was called the joint

1 development and license agreement. And you'll probably hear
2 this referred to during the trial as the JDLA, the joint
3 development and license agreement. You will see the JDLA and
4 hear about it as a part of this trial.

5 The JDLA provided that each party to it would have a
6 license to use the other party's patents during the existence
7 of the JDLA. This license within the JDLA applied to all of
8 each party's products except foundry products. And you will
9 hear about what are and what are not foundry products under
10 the JDLA during this trial.

11 After the JDLA had been in effect for some time between
12 Netlist and Samsung, a dispute developed between them
13 concerning the JDLA and what it required. This dispute has
14 already been addressed by another court, and that court
15 determined that Samsung no longer had a license to Netlist's
16 patents, including the patents asserted in this case, because
17 the JDLA had been terminated and that that occurred and was
18 effective as of July the 15th, 2020. In other words, Samsung
19 was licensed to Netlist's patents under the JDLA until July
20 the 15th, 2020, except as to foundry products.

21 And the issue as to the scope of the license granted
22 under the JDLA is an issue in dispute in this case, and you're
23 going to hear about these issues during this trial.

24 Now, I know that there are many new words and many new
25 concepts that have been thrown at you, ladies and gentlemen,

1 since you appeared for jury duty this morning. The attorneys
2 are going to discuss many of these in their opening
3 statements. The witnesses are going to help you with their
4 testimony as they go through these concepts and terms. And
5 the Court's going to help you through my instructions. So
6 please do not feel overwhelmed at this stage. I promise you
7 this will all come together as we go through the trial.

8 Now, one of your jobs in this case is to decide whether
9 or not the asserted claims of the patents-in-suit have been
10 infringed. You'll also be asked to decide whether or not
11 certain of the asserted claims are invalid. If you decide
12 that any claim of the patents-in-suit has been infringed by
13 the Defendants and is not invalid, then you'll need to decide
14 whether or not that infringement by the Defendants was
15 willful. You will also need to decide what amount of money
16 damages should be awarded to Plaintiff as compensation for
17 that infringement.

18 Now, my job is to tell you what the law is, to handle
19 rulings on evidence and procedure, and to oversee the conduct
20 of the trial. In determining the law, ladies and gentlemen,
21 it is specifically my job to determine the meaning of any
22 language from the asserted claims that needs to be
23 interpreted.

24 And I've already determined the meanings of this claim
25 language from the patents-in-suit, and you must accept the

1 meanings and the constructions, they're sometimes called, that
2 I give you as to the meaning of these terms when you decide
3 whether or not a claim has or has not been infringed and when
4 you decide whether or not a claim is or is not invalid. And
5 you're going to be given a document in a few minutes that
6 reflects these meanings that have already been arrived at by
7 the Court.

8 Now, for any claim language where the Court did not
9 provide you with a definition or a construction, you should
10 apply the plain and ordinary meaning of that language. But if
11 I have provided you with a definition, you must apply my
12 definition to that claim language throughout the case.

13 However, my interpretation of the language from the
14 claims should not be taken by you as an indication that the
15 Court has any personal opinion regarding the issues of
16 infringement, validity, or any of the other issues in this
17 case. Those issues are yours to decide alone.

18 And I'll provide you with more detailed instructions on
19 the meaning of the claims before you retire to deliberate and
20 reach your verdict. In deciding the issues that are before
21 you, you'll be asked to consider specific legal rules, and
22 I'll give you an overview of those rules now, and then at the
23 conclusion of the case I'll give you more detailed
24 instructions.

25 The first issue that you're asked to decide is whether

1 the Defendants, the Samsung Defendants, have infringed any of
2 the asserted claims from the patents-in-suit.

3 Infringement, ladies and gentlemen, is assessed and
4 determined on a claim-by-claim basis. And Netlist, the
5 Plaintiff, must show by a preponderance of the evidence that a
6 claim has been infringed. Therefore, there may be
7 infringement as to one claim but no infringement as to another
8 claim.

9 There are also a couple of different ways that a patent
10 can be infringed, and I'll explain the requirements for each
11 of these types of infringement to you in detail at the
12 conclusion of the case, but, in general, a defendant may
13 infringe the asserted patents by making, using, selling, or
14 offering for sale within the United States or importing into
15 the United States a product meeting all of the requirements of
16 a claim from the asserted patents, or that practices all the
17 required steps of a claim. And I'll provide you, as I say,
18 with more detailed instructions on the requirements for
19 infringement at the conclusion of the case.

20 The second issue that you're asked to decide is whether
21 certain claims from the asserted patents are invalid.

22 Invalidity is a defense to infringement. Therefore, even
23 though the United States Patent and Trademark Office has
24 allowed the asserted claims and even though an issued United
25 States patent is presumed to be valid, you, the jury, must

1 decide whether those claims are or are not invalid after
2 hearing the evidence presented during this trial. You may
3 find a patent claim invalid for a number of reasons, including
4 because it claims subject matter that is obvious.

5 For a patent claim to be invalid because it is obvious,
6 the Defendants must show by clear and convincing evidence that
7 the claim would have been obvious to a person of ordinary
8 skill in the field of the technology of the patent at the
9 relevant time. You'll need to consider a number of questions
10 in deciding whether the invention claimed in the asserted
11 patents is obvious, and I'll provide you with more detailed
12 instructions on these issues at the conclusion of the trial.

13 Now, another way that a claim can be found to be invalid
14 is there may be a lack of an adequate written description. A
15 patent may be invalid if its specification does not describe
16 the claimed invention with sufficient detail so that one
17 skilled in the art can reasonably conclude that the inventor
18 actually had possession of the invention that they're
19 claiming.

20 You'll need to consider a number of questions in deciding
21 whether the patents-in-suit contain a sufficient written
22 description, and I'll provide you with more detailed
23 instructions on these issues at the conclusion of the case.

24 If you decide that any claim in the patents-in-suit has
25 been infringed and is not invalid, then you'll need to decide

1 whether the Defendants' infringement has been willful. The
2 Plaintiff has the burden of proof to prove willful
3 infringement by a preponderance of the evidence. And if you
4 decide that any infringement which you have found was willful,
5 that should not in any way affect any damages that you might
6 award. The Court will take the issue of willfulness into
7 account later.

8 Further, if you decide that any claims from the
9 patents-in-suit have been infringed and are not invalid, you
10 will need to decide at that time what amount of money damages
11 should be awarded to the Plaintiff to compensate Netlist for
12 that infringement.

13 A damage award in a patent case, ladies and gentlemen,
14 must be adequate to compensate the patent holder for the
15 infringement, and in no event may a damage award be less than
16 what the patent holder would have received if it had been paid
17 a reasonable royalty for the use of its patent.

18 However, the damages that you award, if any, are meant to
19 compensate the patent holder and they are not meant to punish
20 the Defendants. And you may not include in any damages award
21 that you might make an additional amount as a fine or a
22 penalty above what is necessary to fully compensate the patent
23 holder for the infringement.

24 Additionally, damages cannot be speculative, and the
25 Plaintiff Netlist must prove the amount of its damages for the

1 alleged infringement by a preponderance of the evidence.
2 However, the fact that I'm instructing you on damages now does
3 not mean that Netlist is or is not entitled to recover any
4 damages.

5 Now, you're going to be hearing from a number of
6 witnesses over the course of this trial, and I want you to
7 keep an open mind while you're listening to the evidence and
8 not decide any of the issues until you have heard all the
9 evidence. And this is important, ladies and gentlemen. While
10 the witnesses are testifying, remember you, the jury, will
11 have to decide the degree of credibility and believability to
12 allocate to each of the witnesses and to all of the evidence.

13 So while the witnesses are testifying over the course of
14 this trial, you should be thinking about and asking yourselves
15 things like this: Does the witness impress you as being
16 truthful? Does he or she have a reason not to tell the truth?
17 Does he or she have any personal interest in the outcome of
18 the case? Does the witness seem to have a good memory? Did
19 the witness have an opportunity and ability to observe
20 accurately the things that they've testified about? Did the
21 witness appear to understand the questions clearly and answer
22 them directly? And, of course, does the witness' testimony
23 differ from the testimony of other witnesses? And if it does,
24 how does it differ? These are some of the kinds of things you
25 should be thinking about while you're listening to each of the

1 witnesses.

2 I also want to talk to you briefly about expert
3 witnesses. When knowledge of a technical subject may be
4 helpful to the jury, a person who has special training and
5 experience in that particular field, we call them an expert
6 witness, is permitted to testify about his or her opinions on
7 those technical matters.

8 However, ladies and gentlemen, you're not required to
9 accept an expert witness' opinions or any witness' opinions
10 for that matter. It's up to you to decide whether you believe
11 a witness, whether what they are telling you in your view is
12 correct or incorrect, and whether or not you want to believe
13 it, and to what degree, if any, you want to give it weight.

14 Now, I anticipate that there are going to be expert
15 witnesses testifying in support of each side in this case.
16 But when they do, it will be up to you to listen to their
17 qualifications. And when they give you an opinion and explain
18 the basis for that opinion, you will have to evaluate what
19 they say, whether you believe it, and to what degree, if any,
20 that you want to give it weight.

21 Remember, ladies and gentlemen, judging and evaluating
22 the credibility and the believability of each and every
23 witness is an important part of your job as the jury in this
24 case.

25 Now, during this trial it's possible that there will be

1 testimony from one or more witnesses that are going to be
2 presented to you through what we call a deposition. In trials
3 like this, it's difficult to have every witness appear in
4 person live in court at the same time. So lawyers for each
5 side prior to the trial take the depositions of the witnesses.

6 In a deposition, a court reporter is present, the witness
7 is sworn and placed under oath just as if he or she were in
8 court, and then the witness is asked questions by counsel for
9 both of the parties, and the questions and the answers are
10 recorded and taken down. Often they are videoed.

11 It's important to know, ladies and gentlemen, that when a
12 deposition witness is presented to you, you're going to be
13 seeing various portions of that overall deposition that had
14 been selected and put together.

15 Let me explain it this way. In a typical deposition, the
16 witness is questioned for up to seven hours. Now, with a
17 particular witness, there may be 20 minutes of actual
18 testimony that the lawyers believe is relevant to this case
19 and that you need to hear from this witness by deposition.

20 Rather than play seven hours of recorded video deposition
21 to get 20 minutes' worth of testimony, that 20 minutes which
22 may come in several little segments will be cut out, spliced,
23 and put together, and you will be presented with that 20
24 minutes. That's a whole lot better than having to listen to
25 seven hours to get 20 minutes.

1 But as a part of that, you're going to see splicing;
2 you're going to see little glitches, perhaps; you're going to
3 hear differences in voices. You're going to see the little
4 irregularities that necessarily come with taking parts of that
5 deposition and putting it together to present to you. You
6 should not focus on those differences. You should focus on
7 what the witness says and the answers to the questions that
8 they give.

9 And to that extent, you should try to determine the
10 believability and credibility of that deposition testimony
11 just as if that witness had appeared in person and given you
12 that testimony live from the witness stand.

13 Again, don't be confused with little glitches or gaps or
14 breaks or irregularities. Focus on the substance of what's
15 presented through these deposition witnesses.

16 A deposition witness is entitled to the same
17 consideration insofar as possible and is to be judged as to
18 its credibility, weight, and otherwise considered by the jury
19 in the same way as if the witness had appeared in open court
20 and testified live from the witness stand.

21 Also, ladies and gentlemen, during the course of the
22 trial you're going to be presented with various documents
23 which the Court has admitted into evidence as exhibits. Some
24 of these documents are going to have portions of them that
25 have been redacted. Said another way, there are going to be

1 portions that have been blacked out. Those happen because the
2 Court determined in advance of the trial that those portions
3 you cannot see are not relevant or not important and that you
4 do not need to see them.

5 When you're presented with a document that may have
6 portions of it redacted, don't focus on what's redacted.
7 Don't try to guess what's been blacked out. Focus on what's
8 there and visible and that you can read and understand. In
9 other words, focus on the unredacted portions of the document
10 and don't try to guess what has been blacked out per the
11 Court's earlier instruction.

12 Now, over the course of this trial, it's possible that
13 the lawyers are going to raise certain objections from time to
14 time. And when they do, I will issue rulings on those
15 objections. You should understand it's the duty of an
16 attorney on each side of the case to object when the other
17 side purports to offer evidence or testimony that the attorney
18 believes is not proper under the rules of the Court, the Rules
19 of Civil Procedure, and the Rules of Evidence.

20 Now, upon me allowing the testimony or other evidence to
21 be produced over the objection of an attorney, the Court does
22 not, unless expressly stated, indicate an opinion as to the
23 weight or effect of that evidence. As I've said, you, the
24 jury, are the sole judges of the credibility and the
25 believability of all the witnesses and what effect and weight

1 to give to all the evidence.

2 Now, before today through various pretrial hearings that
3 you were not present for, the Court has spent a considerable
4 amount of time with counsel for both of the parties going
5 through a long list of documents that one party or the other
6 party believes should be properly admitted as exhibits in this
7 case.

8 The Court's heard the arguments for why a certain
9 document should be admitted as an exhibit. The Court's heard
10 the arguments from the other side why that document should not
11 be admitted. The Court's ruled on those arguments. That
12 means if you're shown a document in the course of this trial,
13 I have already seen it, heard about it, ruled on it. And if
14 you're seeing it, it means I have admitted it as an exhibit in
15 this case.

16 And whether you understand this or not, that saved you a
17 lot of time rather than the lawyers presenting it for the
18 first time during the trial, then hearing the objection, then
19 hearing the arguments against the objection, and the back and
20 forth that goes on for some time, ultimately with the Court
21 deciding whether to admit or not admit the document.

22 All that's been done in advance and that saved you a
23 considerable amount of time and it will streamline the trial
24 of this case. And the Court appreciates the efforts of the
25 lawyers in working with the Court to do that in advance. But

1 that means when you're shown an exhibit in this case, I've
2 already determined that it's properly admissible or it
3 wouldn't be shown to you in the first place. And the parties
4 can simply present it, put it in the proper context, and go
5 over it with the witnesses wherever they think it's relevant.
6 And that saved us all a lot of time during this trial.

7 However, it's still possible that there are going to be
8 objections that arise during the trial. If I should sustain
9 an objection to a question addressed to a witness, then you
10 must disregard the question entirely and you may draw no
11 inference from its wording or speculate about what the witness
12 would have said if I had allowed them to answer the question.
13 On the other hand, if I overrule the objection, then you
14 should consider the question and the answer just as if no
15 objection had been made.

16 As I told you during jury selection, the United
17 States -- the law of the United States allows a district judge
18 such as myself to comment to the jury on the evidence, but
19 provides that the jury can disregard those comments in their
20 entirety because, as I've said, you, the jury, are the sole
21 judges of the facts and you, the jury, are the sole
22 determiners of the credibility and believability of the
23 witnesses and what amount of weight to give to the evidence
24 that's presented. And even though the law may permit me to
25 comment to you on the evidence, as I told you earlier, I

1 intend to try very hard not to comment on any of the evidence
2 or the witnesses throughout the trial.

3 Now, in front of me is Mr. McRoberts, our court reporter.
4 He is taking down everything that's said in the courtroom.
5 And over the course of the trial you may hear me tell people
6 not to talk at the same time because he can't take down
7 accurately what two people say when they're talking at the
8 same time.

9 But the written transcript of everything that's said
10 during this trial that's created by the court reporter, it's
11 not going to be available to you, ladies and gentlemen, for
12 you to take back into the jury room and review during your
13 deliberations, which means it is important that you rely upon
14 your memory of the evidence over the course of the trial and
15 that you pay close attention to the testimony of all the
16 witnesses and all the exhibits that are offered into evidence.

17 Now, in a moment you're going to each be given a juror
18 notebook. In this notebook, you're going to find several
19 things. First of all, you're going to find a copy of each of
20 the five patents-in-suit. You're going to also find a table
21 or a chart showing the language from the asserted claims that
22 the Court has construed or interpreted, and the construction
23 or definition that the Court has arrived at side by side with
24 the claim language and the construction the Court has reached
25 advising you as to what that claim language means.

1 Behind that, you're going to find a section of tabbed
2 witness pages. For each witness that might testify in this
3 case, in these notebooks you'll have a single page with a
4 photograph, a head-and-shoulders' photograph, of that witness
5 at the top of the page and their name underneath, and below
6 that, ruled lines if you want to take notes there.

7 The Court's determined that after a trial, while you're
8 deliberating in the jury room, it's very helpful to go back
9 and see a picture of all the various people that have
10 testified over the course of the trial, and that's why those
11 witness pages are going to be in these notebooks.

12 Then behind those witness pages, you're going to find a
13 brand new legal pad that's been three-hole punched and put
14 into the notebook so that you'll have additional space for
15 note-taking if you choose to take notes over the course of the
16 trial.

17 And in the front flap of each notebook, you should find a
18 pen in case you don't have ready access to one for use in
19 taking notes, again if you determine that you want to take
20 notes. It's up to each juror, ladies and gentlemen, to
21 determine whether they want to take notes over the course of
22 the trial, and if they do, how extensive those notes should
23 be.

24 But remember any notes you take are to aid your memory of
25 the testimony and the evidence produced during the trial. You

1 still have to rely on your memory of the evidence. And the
2 notes are only there to refresh and remind you of that
3 testimony that you should be paying close attention to. And
4 that's the only reason you should be keeping notes.

5 All right. At this point I'm going to ask our Court
6 Security Officer to distribute these juror notebooks to each
7 of the members of the jury.

8 (Pause in proceedings.)

9 THE COURT: I won't go over what's in these
10 notebooks again. I've already covered that with you.

11 But let me just say this, ladies and gentlemen. Those
12 notebooks are not to be left lying around over the course of
13 the trial. They need to be in your control and possession at
14 all times. They either need to be in your hands here in the
15 courtroom or they need to be on the table in the jury room.

16 And when you leave each day during the course of the
17 trial, I want you to take those notebooks to the jury room and
18 leave them closed on the table there so they'll be with you --
19 or waiting for you, rather, the next morning when you come
20 into the courtroom.

21 Now, there may be times during the trial that we'll take
22 a brief recess or break, and if we're going to be out of the
23 courtroom for a short period of time, I'll simply say, ladies
24 and gentlemen, you may leave your notebooks in your chairs, in
25 which case it's fine, just to simply close them and leave them

1 in your chair because we're not going to be out of the
2 courtroom very long.

3 If it's going to be longer than that, I'll tell you to
4 take them with you when you go into the jury room because they
5 should either be in your possession or they should be in the
6 jury room. They should not be left just laying around, for
7 lack of a better term.

8 Now, in a moment we're going to hear opening statements
9 from the attorneys representing the competing parties. And as
10 I've told you, these opening statements are designed to give
11 you, the jury, a roadmap about what each side expects to offer
12 by way of their evidence.

13 And you should remember throughout the trial, ladies and
14 gentlemen, what the lawyers tell you is not evidence. The
15 evidence is the sworn testimony of the witnesses who will
16 testify under oath from the witness stand, subject to cross
17 examination, and the evidence are those exhibits that the
18 Court has already reviewed, heard argument on, and determined
19 are admissible under the rules of evidence, and is
20 pre-admitted for use during this trial. That's the evidence.

21 What the lawyers tell you is their impression of what the
22 evidence will be. And they have a right to point out what
23 they think the evidence is going to show you, but remember,
24 what they tell you is not evidence.

25 Now, after the opening statements, we'll proceed with the

1 Plaintiff's case in chief, as I described to you before lunch,
2 and we'll proceed over the course of the trial with the
3 Defendants' case in chief, any rebuttal case the Plaintiff may
4 put on, my final instructions on the law to you, and closing
5 arguments from the attorneys, after which I'll direct you to
6 retire to the jury room and to deliberate on your verdict.

7 When I give you my final instructions on the law at the
8 close of the evidence, ladies and gentlemen, I'm going to
9 provide that you'll each have a printed copy of those
10 instructions to take with you when you go to the jury room to
11 deliberate on your verdict, because I want you to listen to
12 those instructions and not feel like you need to be compelled
13 to take notes. So I want you to understand you'll have your
14 own printed copy of those instructions at that time when you
15 retire to the jury room to deliberate on your instructions
16 [sic].

17 Let me repeat my earlier instruction to you that
18 throughout this trial and until I release you as jurors, you
19 are not to communicate with anybody about this case in any
20 way, and you're not to communicate with the eight of
21 yourselves about this case in any way until I direct you to
22 retire to the jury room and deliberate on your verdict.

23 And then when that happens, you become obligated to
24 discuss among the eight of you the evidence that you've heard
25 over the course of the trial in an effort to come to a

1 unanimous agreement about how to answer the questions that are
2 going to be submitted to you in the verdict form.

3 And let me also remind you again, over the course of this
4 trial the lawyers in this case, the witnesses, and anybody
5 associated with either side, is not going to visit with you,
6 not going to speak, not going to be friendly, not going to
7 interact with you. And that's because they're following my
8 instructions. Don't take it for rudeness, don't take it for
9 anything negative; they are simply doing what I have
10 instructed them to do.

11 With that, we'll proceed to hear opening statements from
12 the attorneys in the case.

13 Mr. Sheasby, you may present the Plaintiff's opening
14 statement. Would you like a warning on your time?

15 MR. SHEASBY: I would, Your Honor. If I could have
16 a warning with 15 minutes left and with three minutes left, I
17 would appreciate it.

18 THE COURT: I will warn you when you have 15 minutes
19 remaining and three minutes remaining.

20 You may proceed.

21 MR. SHEASBY: May it please this Honorable Court.

22 Good afternoon, ladies and gentlemen. My name is Jason
23 Sheasby, and I speak on behalf of Netlist.

24 I want to begin by echoing what Judge Gilstrap said
25 repeatedly this morning and thanking you for your service.

1 Netlist recognizes that this is sacrifice, it's a personal
2 sacrifice, it's a financial sacrifice. This case is
3 incredibly important to the future of Netlist.

4 Judge Gilstrap spoke about the right to a trial by jury.
5 He spoke about the fact that our founders created this right.
6 And a lot of folks think about the right to the trial by jury
7 is the right for Plaintiffs just as assuredly the right of
8 Samsung, the Defendant, to have a jury trial. That's actually
9 not what our founders had in mind when they talked about the
10 right to trial by jury.

11 What our founders had in mind, what the right to the
12 trial by jury is, is that the most important questions in our
13 society, the most important issues in disputes should be
14 decided, will be decided, and can be decided by the citizens
15 of this country. The right to the trial by jury is your
16 right. It's your right to weigh in on incredibly important
17 issues that relate to our society, one of which is being
18 decided in this case.

19 Just as the right to the trial by jury is a
20 constitutional right, so are patents enshrined in the
21 Constitution. When the founders created our original
22 Constitution, they contemplated and made provision for the
23 protection of patent rights, because American innovation,
24 American technology, American patents, is what makes us
25 strong, it makes us competitive, and it makes us safe.

1 The Plaintiff in this case is Netlist. Netlist was
2 founded in 2000 in Orange County, California. It has 120
3 employees, and its focus was on innovating in the space of
4 memory modules.

5 Memory modules are a strategic asset of this country.
6 Our air defense system requires memory modules. Every major
7 manufacturing facility in the United States requires memory
8 modules. The cell system that connects all of our various
9 states across this continent requires memory modules. When we
10 go to the hospital and we get a specialized scan to diagnose
11 disease, it requires memory modules. They are a critical,
12 strategic asset of this country.

13 Netlist's innovation became known to Samsung. Samsung
14 actually asked its most senior executives to come to the
15 United States, to come to California, and to ask Netlist to
16 collaborate on a design of a product. The design of that
17 product is not at issue in this case.

18 What Samsung did was it took Netlist's patents and it
19 infringed them. And the infringement in this case does not
20 relate to any of the behavior from before the termination of
21 the relationship between the parties. The infringement in
22 this case is about Netlist's [sic] behavior after the
23 agreement terminated. Netlist took -- Samsung took Netlist's
24 innovation.

25 This trial this week will focus and decide one

1 issue--what are the consequences of violating the law. Patent
2 right is a property right. It's a sacred right. No one can
3 use Netlist's patents without express permission. Samsung
4 does not have that permission and it now must face the
5 consequences of its behavior.

6 This is some of the major companies, some of the leading
7 technology companies in the world, who have reached out to
8 Netlist and who Netlist has designed and supplied memory
9 modules to.

10 This is Doctor Jung Bae Lee. He's the president of
11 Samsung memory. And at the time that Samsung approached
12 Netlist, he was the head of the office that designs and
13 decides what products Samsung will launch. And he's
14 instructed by the past president of Samsung to reach out and
15 enter into technological collaboration with Netlist.

16 The products at issue in this case, dual in-line memory
17 modules called DIMMs--and Mr. Baxter talked to you about a
18 DIMM; it's plugged in on both sides--high bandwidth memory
19 products, these products are not products that were the
20 subject of our relationship. These are products in which
21 Samsung unilaterally made a decision to take our intellectual
22 property and to sell infringing products.

23 There is a very powerful tool in federal proceedings, and
24 it's called discovery. And discovery allows us to collect
25 information, information about what is going on behind the

1 scenes. So we know that companies, they issue press releases,
2 they have slick commercials, they have press staff. But
3 sometimes, and especially in federal courts, we are allowed to
4 pull back the curtain and to see what Samsung actually thinks.

5 This is an example of it. This is PX 1756. And it's
6 very clear that what I say in this opening is not evidence.
7 These documents are evidence. And these are Samsung's words
8 from 2019, long before this lawsuit was initiated, in which
9 Samsung candidly admitted that they were focused on obtaining
10 rights to our patents on LRDIMM.

11 You can write this number down. If you want to see it in
12 deliberations, you will be able to do so.

13 Samsung internally wrote down they wanted our patents on
14 LRDIMM. One of the products that is accused of infringement
15 in this case is LRDIMM. My words are not evidence. What's on
16 the screen in front of you is evidence.

17 This was not once. This is another example of an
18 internal Samsung document. You'll notice the reference to
19 company N. Company N is the internal code word that Samsung
20 used for Netlist. That will not be disputed. Samsung
21 witnesses will concede that is the internal code word for
22 Netlist.

23 And, once again, Samsung focuses in this internal
24 document on the fact that it needs our patents on RDIMM and
25 LRDIMM. RDIMM is one of the other categories of products that

1 Samsung is accused of infringement in this case. These are
2 Samsung's internal documents.

3 THE COURT: Mr. Sheasby, I'm happy for you to stand
4 beside the podium, but pull the microphone out because I'm not
5 hearing you as clearly as I want to.

6 MR. SHEASBY: Thank you very much, Your Honor.

7 THE COURT: All right. Please continue.

8 MR. SHEASBY: The first issue you'll be asked to
9 decide is infringement. Infringement is an issue on which
10 Netlist bears the burden. And to meet that burden, we asked
11 independent experts to actually analyze the internal Samsung
12 confidential documents. They've had access to top secret
13 Samsung information, and that has allowed them to determine
14 whether the patent is infringed.

15 So, for example, we've asked Doctor Mangione who spent
16 many years at UCLA in designing memory control systems at
17 Motorola to examine the first two of our patents. These are
18 the '918 and '054 Patents.

19 Patents have very long numbers. They're referred to by
20 the last three digits. Judge Gilstrap told you that
21 previously, and so I will refer to them as well by the last
22 three digits.

23 I'd like Doctor Mangione to stand and introduce himself.

24 Thank you very much.

25 And what he will analyze is how the '918 and '054 Netlist

1 patents are used by Samsung and Samsung's most advanced memory
2 technology. It's called DDR5. And in particular, Samsung
3 uses a form of intelligent power module management. These
4 modules have very delicate chips on them and very complex and
5 different types of chips. And if you do not provide the
6 precise amount of power at the precise time, you can actually
7 destroy the module. And so this technology is what has
8 enabled Samsung to sell incredibly fast modules. On-module
9 power management is what has led to Samsung's newest, most
10 advanced memory module.

11 Doctor Mangione will show you the claim of the patent.
12 The claim of the patent defines our property right. He will
13 split it into elements. And for each element, he will
14 actually show you the internal Samsung documents, the internal
15 admissions of Samsung's engineers, establishing that the claim
16 is met.

17 It is not an accident that Samsung determined to infringe
18 our patents on on-module power management. Samsung has been
19 fixated on this Netlist technology for years.

20 This is PX 621. This is a Netlist presentation from
21 2014. This is a presentation that was found in Samsung's
22 records in this litigation. On the left-hand side, this is
23 Samsung being put on information that Netlist is pursuing its
24 inventions and is seeking a patent--that's what U.S. patent
25 pending means--on intelligent on-module power management.

1 This is a document from Samsung's internal records. It's a
2 Netlist document that we found.

3 Why is this important? It's important because the
4 president of Samsung memory admitted under oath that DDR5 has
5 that exact same design. DDR5 has power management control
6 on-module, which is exactly the technology that they've been
7 tracking at Netlist since 2014.

8 Samsung was fixated on the innovations of Netlist. This
9 is a 2019 email. This is Samsung reaching out to Netlist
10 engineers and asking if we can have a technical meeting so
11 that Netlist engineers can explain how the technology would
12 work for power management for DDR5 DIMM. This is 2019.

13 In 2022, Samsung launched its infringing DDR5 product
14 with--and you see it down here--management -- power management
15 integrated circuit. And why did they do that? Why did they
16 reach out to us and ask us for our technology in 2019? Why
17 did they launch it in 2022 without permission?

18 They did it because they needed it, because they were
19 desperate for it, because it increased the memory efficiency
20 of their design by 30 percent. What I say is not evidence.
21 This document is evidence. Three years after reaching out to
22 our engineers, the infringing technology appears in their
23 products.

24 The second family of patents is also being discussed by
25 Doctor Mangione.

1 Doctor Mangione, you do not need to stand again for this
2 one.

3 That product that's accused of infringement is called a
4 DDR4 LRDIMM. LRDIMM stands for load-reduced DIMM. This is
5 the teaching from our patents, which is it talks about
6 load-reduced memory modules, and it actually shows an example
7 of a load-reduced memory module. This is Samsung's design
8 that infringes our technology, the evidence will show. It's
9 called a load-reduced dual in-line memory module. It is not a
10 coincidence that the designs in our patents appear in
11 Samsung's products.

12 We know this because Samsung was internally tracking the
13 innovation at Netlist. Once again, this is internal, candid
14 information from Samsung stating that Netlist is well-known in
15 the industry as creating LRDIMM technology. They candidly
16 conceded internally that we created LRDIMM technology. And in
17 this court they will deny it, they will claim that they do not
18 use our technology, they will claim that we did not invent
19 LRDIMM technology, they will claim that we are entitled to
20 nothing--the exact opposite of what they said candidly in
21 2019.

22 This is another example. Not only did we create LRDIMM
23 technology, but they focused on the fact that they wanted our
24 technology on LRDIMM.

25 The third family of patents will be discussed by Doctor

1 Brogioli.

2 Doctor Brogioli, would you please stand?

3 Thank you.

4 Doctor Brogioli is a fascinating history. He's a
5 professor and academic at Rice University in Houston. He also
6 does something and he did something historically which is he
7 actually designed chips for free-scale semiconductors. So he
8 has real-world experience designing the types of computer
9 chips that are used in the technology in our world.

10 THE COURT: You have 15 minutes remaining.

11 MR. SHEASBY: And this is the product that's accused
12 of infringement in this case. It's called a high bandwidth
13 memory product. And you'll see it has a very unique structure
14 in it. It has something called a TSV in it. TSV stands for
15 through-silicon vias. The record will show that Samsung was
16 significantly behind its largest competitor in creating HBM
17 products. It was years behind.

18 The record will show, we believe, that Samsung was given
19 an asked-for presentation by Netlist. This is a Netlist
20 document. This was slides that were ultimately presented to
21 Samsung orally. And you'll see what it talks about. This is
22 our patent, the '060 Patent, and it talks about its use for
23 TSV stacked packages. TSVs are tunnels that run up through
24 the middle of chips so you can stack them extremely high. It
25 creates extraordinary density in extraordinarily advanced

1 chips.

2 The left-hand side is the document from 2015. It's a
3 Netlist document. The right-hand side is the TSV design
4 product that Samsung launched after, after receiving our
5 presentation. This was not an accident.

6 In fact, Samsung was well aware that our technology
7 covered their HBM products. This is a 2016 email in which
8 Samsung actually asked us, What products does your technology
9 cover? This is PX 446. And we identified the first of the
10 two patent families at issue in this family, and we said that
11 it covered their HBM product.

12 Samsung at no point in time before the initiation of this
13 lawsuit asked permission to use our HBM technology. Patents
14 are strict liability.

15 Samsung will make a number of excuses to avoid the
16 consequences of behavior. First, Samsung will seek to
17 diminish Netlist as a company. We are 120 employees, we are
18 very proud of our size, we are very proud of our achievements.

19 Samsung is an extraordinarily large company. In fact,
20 you hear Samsung talk about the fact that they have 120,000
21 patents. You'll also hear them talk about the fact that they
22 have 6,000 jobs in the United States.

23 But there are two facts that I think you need to keep in
24 mind when you hear those statements. The first is DRAM memory
25 modules are such an important strategic asset, that Samsung

1 declines to design or manufacture them in the United States.
2 They keep careful control of that technology only in Korea.

3 The second fact you should consider, and I believe this
4 will be undisputed, is that Samsung cannot identify a single
5 Samsung patent that covers the products at issue in this case.
6 The reason why Samsung had to use our patents is because
7 Samsung did not have its own advanced technology. That is why
8 one of the largest electronic companies in the world flies to
9 Orange County, California, and asks to collaborate with
10 Netlist.

11 The second issue, Samsung will say that it does not
12 infringe the patents. Samsung's corporate representative,
13 however, will admit that he has no basis for explaining why
14 Samsung does not infringe the patents. In fact, you will hear
15 the deposition testimony of a large number of Samsung
16 engineers, and not a single one of those Samsung engineers
17 will testify under oath that Samsung does not infringe these
18 patents. The engineers will not defend the theories advanced
19 by the lawyers in this case.

20 Let me give you an example of the theories that will be
21 advanced in this case. So Samsung has brought its own
22 experts, and they are entitled to be carefully listened to,
23 but they're also -- and you have the power to use your common
24 sense.

25 So one of the issues is that Samsung will say its HBM

1 products use something called a DRAM circuit, and DRAM
2 circuits are not covered by our patent. In fact, they will
3 bring Doctor Robins who will say that.

4 Well, you see how their products use something called a
5 TSV? We actually asked their senior engineer and their
6 corporate representative about what a DRAM circuit is. A DRAM
7 circuit is on the left-hand side, he testified. It is
8 external connections, external connections which are
9 incredibly slow and inefficient. And he contrasts that on the
10 right with TSV connections, TSV connections which are fast and
11 innovative, which is the exact design we presented to them in
12 2015.

13 He says--Mr. Kim--the left-hand side is a DRAM circuit,
14 the right-hand side is a TSV connection. Why is this
15 important? It's important because Samsung's HBM products use
16 the TSV. They do not use the DRAM circuit or the external
17 connection. Mr. Kim testified to that under oath.

18 And so what you will see is you will see experts that
19 Samsung has brought, and those experts will present testimony
20 that contradicts the sworn oath testimony of Samsung's own
21 engineers and the internal documents. Samsung will say their
22 HBM products have DRAM circuits. The only folks who agree
23 with that are Samsung's lawyers and its experts. Its
24 engineers who testify under oath said the exact opposite.

25 Let me give you another example. Samsung will claim that

1 we use something called LDO circuits. And LDO circuits are
2 not converters, and Samsung will bring an expert who will
3 testify to that. But you must keep in mind, Who knows more
4 about Samsung's products than those who actually designed it?

5 Samsung, because it doesn't innovate on its own all the
6 time in this space, actually hired another company called
7 Renaissance to support it in designing the infringing products
8 at issue in this case. And that engineer who has no skin in
9 the game says candidly that those LDOs are converters.
10 Samsung's experts and their attorneys will say the exact
11 opposite of what Samsung's engineers say.

12 The next issue is they will argue that the patents are
13 invalid. The patents are presumed valid. Two issues to keep
14 in mind here. One, credibility. This is PX 1756. This is
15 Samsung internally describing Netlist as having unique
16 proprietary know-how. And yet in this case they will say our
17 technology is worthless, we're claiming things we didn't
18 create--totally contrary to what they said in 2019. In fact,
19 Samsung will claim that we didn't even invent LRDIMM
20 technology.

21 Samsung will claim that our technology is old. But their
22 experts will admit under oath that no one in the world, no one
23 in the world, has designed a product that has each claim of
24 the Netlist patents in it. No one before Netlist.

25 Samsung will also claim that we're not entitled to our

1 invention, and the reason they will say that is the following:
2 Netlist engineers prepare omnibus applications that have many,
3 many different inventions in them, and they file those
4 applications. The Patent Office has a procedure. It's a
5 procedure that Samsung uses; it's a procedure that Samsung
6 experts use. And what that procedure does is it allows you to
7 seek additional patents on your original technology.

8 So, in this situation, this is for the '339 Patent, we
9 formally told the Patent Office that we were filing for a new
10 set of claims, we said those claims existed in that original
11 application we filed in 2009, we would like you to confirm
12 that, and we would like you to issue claims on our new
13 invention.

14 And the Patent Office confirmed it after checking it with
15 analysis.

16 Samsung will tell you there's something wrong with this
17 behavior. Rules apply to all companies, small and big.
18 Samsung uses continuation practice because continuation
19 practice is how you make sure that the invention that you
20 originally create is protected.

21 The last thing. Samsung will say our technology is not
22 valuable, they could do it in lots of different ways. But the
23 record speaks to the opposite. Two-and-a-half years after
24 reaching out to us in 2019, they launch an infringing design
25 that they tout as having 30 percent power savings. It's what

1 allows them to launch their new technology.

2 We asked Samsung witnesses under oath something very
3 important. If our technology is not useful, do something
4 else. What is your alternative that's commercially available
5 and does not use our technology? Not a single Samsung
6 expert -- single Samsung witness will testify under oath as to
7 any non-infringing commercially-acceptable alternative to our
8 technology. There may be other alternatives, but if those
9 alternatives are covered by our technology, it is not
10 something that is available to Samsung.

11 This is Kyungsoo Park, who was designated on the presence
12 or absence of acceptable non-infringing alternatives. He
13 could render no opinion on this subject.

14 The critical value of this technology is depicted in the
15 evidence that I presented to you, the evidence of showing a 30
16 percent power savings, the evidence in which Samsung
17 acknowledges that we created LRDIMM technology, the evidence
18 in which Samsung, having lost the race to its largest
19 competitor, reached out and used our technology to make its
20 HBM products. And for that behavior, we will ask the jury to
21 award a reasonable royalty of \$404 million.

22 And we will do that by presenting the detailed analysis
23 of Mr. David Kennedy.

24 Mr. Kennedy, can you stand?

25 Mr. David Kennedy is an expert in licensing. Mr. Kennedy

1 has licensed over 200 agreements. He has powerful real-world
2 experience that makes him understand just how incredibly
3 valuable this technology is to Samsung.

4 THE COURT: Three minutes remaining.

5 MR. SHEASBY: What I say is not evidence, but what I
6 show, the words of Samsung witnesses, their candid admissions
7 in their documents, is evidence. And that evidence speaks
8 loudly and emphatically.

9 When you hear from the Defendants, when you listen to
10 their presentation, think about how many times they show you
11 an actual piece of evidence with an exhibit number. Think
12 about how many times they show you an actual testimony from
13 their witnesses supporting what they say.

14 This case is incredibly important to Netlist. We thank
15 you for your attention, and we are in your hands.

16 THE COURT: All right. Defendants may present their
17 opening statement to the jury.

18 MR. CORDELL: May we approach for a moment, Your
19 Honor?

20 THE COURT: You may approach.

21 (The following was had outside the hearing of the
22 jury.)

23 MR. CORDELL: So, Your Honor, we have a serious
24 problem. Mr. Sheasby said at least a half dozen times that
25 Samsung took this technology from Netlist; Samsung was

1 determined to infringe; said Netlist hosted all of the biggest
2 technology companies in the world because they were interested
3 in this technology; and that, critically, Samsung could not go
4 forward without Netlist's advanced technology.

5 That opens the door to the entire JEDEC mess because the
6 reality is Samsung is getting this technology from itself and
7 from JEDEC. And it's in direct response to the repeated
8 statements that Mr. Sheasby said.

9 He also used a number of exhibits that weren't provided
10 to us, including the one that was --

11 THE COURT: Are you talking about slides,
12 demonstrative slides?

13 MR. CORDELL: Slides, correct. So he had one out of
14 JTX 24 that had 30 percent delta, if you recall in memory
15 between two JEDEC memory generations. And had I had that
16 slide, I would have pointed it out that makes it impossible
17 for us not to talk about JEDEC because the contrast he was
18 creating was between two successive JEDEC generations, not
19 Samsung products but successive JEDEC generations.

20 So for all of that, Your Honor, I'd like the Court's
21 guidance on what I'm supposed to do, how do I rebut this.

22 MR. SHEASBY: Your Honor, to be clear, the slide or
23 that exhibit was in the opening decks that were exchanged. I
24 did show a blow-up of it, which I'm entitled under the slide.
25 I said nothing about JEDEC. This is another opportunity to

1 inject JEDEC. Nothing I said was different from what was in
2 my slides this morning.

3 THE COURT: Let me save you both some time. I am
4 not persuaded at this juncture that the door has been opened
5 to JEDEC, and I'm not granting leave to go into it.

6 MR. SHEASBY: Thank you, Your Honor.

7 MR. CORDELL: May I just ask one more thing? I
8 don't have that slide. That slide was earlier produced, but
9 it was not in the production of slides that they said after
10 Your Honor had made rulings.

11 THE COURT: If you want to use it in your opening,
12 as long as you don't stray from the other guidance I've given
13 you, you have leave to do that.

14 MR. CORDELL: The problem is I don't have it. He
15 also used a number of Patent Office slides that they've
16 created that we had never seen before.

17 MR. SHEASBY: Your Honor, we had an agreement that
18 if it was just the blow-up of a pre-admitted exhibit, we were
19 allowed to use it without exchange. That was an agreement
20 that's in the pretrial order.

21 MR. CORDELL: That's not what I saw, Your Honor.
22 What I saw was -- you'll recall the continuation practice
23 slides that he put up where he was characterizing the ability
24 of parties to file continuation applications. That's what he
25 put up, but those were never provided to us.

1 MR. SHEASBY: Your Honor, they're in evidence. I am
2 allowed to comment on the evidence, and we have an express
3 stipulation --

4 THE COURT: Do you have hard copies of these slides,
5 Mr. Sheasby?

6 MR. SHEASBY: I do, Your Honor.

7 THE COURT: Give them to Mr. Cordell.

8 MR. SHEASBY: All right.

9 THE COURT: And if Mr. Cordell wants to use one that
10 you've used on the elmo, he can use it. But that is not a
11 license to talk about JEDEC or anything that I have precluded
12 so far.

13 MR. CORDELL: But my rebuttal, Your Honor, to the
14 allegation that we took this technology from Netlist is that
15 we collaborated with JEDEC to develop this technology.
16 Nothing was taken from them. So how do I say that? It is in
17 the record and we have an expert on JEDEC.

18 MR. SHEASBY: Your Honor, the expert talks about
19 none of these issues.

20 THE COURT: You know, I'm not going to answer your
21 question because that would involve me trying to tell you how
22 to practice law. You can certainly say, Mr. Sheasby says we
23 took this, we did not and our evidence will show you we did
24 not. But I'm not going to tell you anything more about how
25 you rebut it.

1 MR. CORDELL: If I can make one more -- have one
2 more --

3 THE COURT: That's fine, and I'll start billing this
4 time to both of you-all because we're just burning up the
5 clock.

6 MR. CORDELL: So Your Honor directed that we
7 indicate to the jury that our expert opined that \$8 million
8 was the right number, using that last slide in my deck.

9 THE COURT: Or not using the last slide. Just based
10 on that last slide.

11 MR. CORDELL: So here's the issue. That 8 million
12 comes directly from the JDLA, and that is -- that's a
13 perfectly fine number. The expert apportioned that down. So
14 it's not quite a hundred percent accurate to say that his
15 opinion was \$8 million because that was for 87 patents.

16 THE COURT: What do you want to say it is?

17 MR. CORDELL: Just that that would be an upper
18 bound, I could say.

19 THE COURT: I don't have any problem with you saying
20 that's an upper bound. The expert may actually testify to
21 something lower.

22 MR. CORDELL: Okay. Thank you.

23 THE COURT: All right. Let's go.

24 (The following was had in the presence and hearing
25 of the jury.)

1 THE COURT: Would you like a warning on your time,
2 Counsel?

3 MR. CORDELL: I would, Your Honor. Could I have one
4 at 10 minutes and then at two minutes?

5 THE COURT: I'll warn you when you have 10 minutes
6 remaining and then again when you have two minutes remaining.
7 You may proceed with Defendants' opening statement.

8 MR. CORDELL: Thank you, Your Honor. May it please
9 the Court.

10 So, ladies and gentlemen, again I'm Ruffin Cordell, and
11 I'm proud to stand before you on behalf of our client Samsung.
12 And I, again, would like to echo all of Judge Gilstrap's
13 comments about how much we appreciate your service.

14 And I'm right with him on military service being maybe
15 the highest and best piece of civic duty that we have. I
16 spent a little time in the Marine Corps, but they don't claim
17 me anymore. But I understand that you-all had other plans for
18 this week, and we really do appreciate your time and your
19 service.

20 And I have to respond to my friend Mr. Baxter because he
21 said something in voir dire this morning that kind of troubled
22 me. I mean, I've known him for over 20 years, and what did I
23 do to him to have him stand in front of you and accuse me of
24 being from Washington, D.C.? I'm going to tell my Cajun
25 mother about that because Mr. Baxter knows that I'm not from

1 Washington, D.C., but I hail from Louisiana originally. But
2 I've lived up there for a long time, went up to work for the
3 Patent Office, and live in Alexandria, Virginia, but not
4 Washington, D.C. Good lord.

5 I've been married for 34 years. I have three children.
6 I, you know, have never served on a jury. But, again, I'm
7 very proud to be -- to be in front of you and really
8 appreciate your time and your service.

9 Now, Mr. Sheasby said a lot of things, and I'm going to
10 try to get to them. But in the short amount of time that I
11 have, I'm going to try to focus on the real issues. And a
12 couple of things that I'm going to ask you to do, ladies and
13 gentlemen, and Judge Gilstrap asked the same thing which is
14 you've got to keep an open mind. You've got to hear all the
15 evidence. You can't hear one side of the story and then
16 conclude that everything is the way that one side says.

17 So I'm going to ask you to bear with me on that and --
18 and try to -- try to go through a lot of what was said and
19 look at it critically. Look at the evidence that they're
20 pointing to. Don't tell me that a bunch of companies are
21 beating a path to your door. Well, that doesn't tell me
22 anything.

23 We're talking about patents in this case. We're talking
24 about five patents. We're not talking about things that you
25 sell or people that you might want to have come and work with

1 you for different things. We're talking about these patents.
2 So any time Mr. Sheasby or me or anybody gets up here and
3 starts talking about other things that don't relate to the
4 patents, a little bell ought to go off.

5 And the question becomes, why are they doing this? Why
6 are they distracting us? Why -- you're being asked to do
7 something very difficult, which is to take these patents and
8 take the most complex, highly technically sophisticated
9 technology in the world, these memory devices are cutting
10 edge. It's not a five-patent kind of thing at all. It's a
11 10,000-patent kind of thing at all. It's technology that's
12 been built over decades involving work all over the world.

13 That's the sophisticated technology that we are here to
14 talk about. And so you're going to be asked to apply these
15 patents to that technology, and that's tough. But when Mr.
16 Sheasby stands before you and says, you know, we talked to a
17 bunch of low-level engineers and they didn't know much about
18 patents, well, that's not their job, ladies and gentlemen.
19 And you're going to see how hard that is. So don't be
20 distracted by those kinds of things. Look at the real
21 evidence.

22 But, you know, this -- this case is about a little more.
23 This case is about one party who, you know, filed patents.
24 Mr. Sheasby is right. They filed patents at the Patent
25 Office. But there are rules about the Patent Office. There

1 are rules and laws that regulate the way that works. And one
2 of the things that you are required to do is, when you go to
3 file for a patent, you got to write down your ideas. It's
4 called the written description requirement.

5 His Honor talked a little about it in your preliminary
6 instructions. You've got to write down your idea because we
7 want to make sure it's yours. We want to make sure that when
8 you say you invented this on April 14, 2023, you really did.
9 And the way you do that is by writing it down. And that
10 requirement is very, very important.

11 In this case what you're going to learn happened is that
12 we had these patents. Here's the '918 and the '054 Patent,
13 two of the patents in this case. And the title of this
14 invention, the one they put across the face of the patent
15 application, was flash-DRAM hybrid memory module. Flash-DRAM
16 hybrid memory module. It's kind of a mouthful.

17 Now, what is that? Well, you know, Mr. Sheasby said, oh,
18 my God, you know, you use these things in aircraft systems and
19 guidance and everything. And he's right. But there are
20 different kinds of memory. And the kind of memory that is
21 called DRAM, that engineers call DRAM, is the kind of memory
22 that, when you turn the power off, all the data goes away.
23 Your pictures, whatever it is, they go off. And you may
24 remember that you used to work on a desktop computer and
25 somebody kicked the cord out, the thing would go dark and

1 you'd lose all your work. It's kind of frustrating.

2 But there's another kind of memory called flash that you
3 see up on the screen, and flash is permanent memory. When you
4 put information into that memory, it stays, even if you turn
5 off the power.

6 And that is what the inventors for the '918 and the '054
7 Patents came up with. They came up with a way to put flash
8 and DRAM on the same device. Now, people had done that
9 before. That wasn't new. But they said, you know what, it's
10 taking too long. So we're going to come up with a new
11 controller that, when the power's about to go out, we're going
12 to take your data out of the DRAM memory, the memory that goes
13 away, and we're going to move it into the permanent memory,
14 the flash. And that way you don't get frustrated. Right?
15 Your data doesn't disappear. That was the whole idea here
16 And they tried to make a product out of it, ladies and
17 gentlemen.

18 But here's the problem. Nobody wanted it. Nobody wanted
19 it. And so Netlist came up with this combination DRAM flash
20 hybrid, and they tried to sell it.

21 Now, you heard a lot from Mr. Sheasby about these
22 documents where there was some collaboration between Samsung
23 and Netlist, and there was, but it was about this product. It
24 was about this hybrid flash DRAM product that ultimately
25 nobody wanted. We don't have to even figure out whose fault

1 that was. It just didn't sell. It wasn't a big seller.

2 But what did -- what did they do? Well, they didn't say,
3 okay, you know, our product didn't sell, wasn't that good an
4 idea. Instead, they used something that Mr. Sheasby brought
5 up right at the end there. I don't know if you recall it. He
6 talked about some stuff that can happen at the Patent Office.

7 And it turns out that when you file a patent application,
8 ladies and gentlemen, you go back and forth with the patent
9 examiner a little bit and there's a certain amount of time,
10 and you might run out of time or you might run out of money.
11 There are a lot of things might happen to you, and you might
12 need to kind of extend the process. And that's called filing
13 a continuation. And that's okay. People do it. Right? They
14 run out of time. They have all kinds of issues with it.

15 But what happened in this case? In this case, they
16 didn't just run out of time and then file one more or even two
17 more. They filed six continuations, ladies and gentlemen.
18 They kept that patent application in the Patent Office where
19 only Netlist talks to the patent examiner, we're not invited,
20 they don't tell us about it, so it's just Netlist and the
21 patent examiner going back and forth, and they kept it pending
22 for year after year after year.

23 You can see all the highlighted continuations that I have
24 on the screen. It was filed back in 2007, and the last
25 continuation was in 2018, and the patent ultimately issued in

1 2021. So what we're talking about there is 13 years of
2 continuations, 13 years.

3 Now, you're not going to be asked if that's okay or not.
4 That's not up to you. The Patent Office rules govern the way
5 that works. But here's the problem. When you file a patent
6 application, you say, that's my idea, I invented this, and I
7 wrote it down. And, in fact, they require patent applicants
8 to sign a sworn declaration.

9 The one I have up on the screen is from the '918 Patent.
10 And here Mr. Milton, who's sitting at the table there, signed
11 the declaration saying, this is my invention. And then they
12 filed it off in the Patent Office.

13 The problem is, it didn't stay his invention because his
14 invention, that written description of his invention, was that
15 combination flash DRAM hybrid memory product. That was his
16 invention. But instead what happened is that Netlist kept
17 filing continuations and filing continuations and moving away
18 from his invention.

19 And what the law says, ladies and gentlemen, is if you
20 keep moving your patent claims away, ultimately you don't have
21 a written description anymore and the patent is invalid. And
22 that's what we're going to show you in this case.

23 So when we hear about all the things that Netlist
24 invented and, you know, all the things that -- that Mr.
25 Sheasby was claiming, again, you got to -- you got to look at

1 it with a critical eye.

2 You got to ask them to do one thing that's very important
3 which is to be honest about what they actually invented. And
4 if they're going to stand before you and ask for all this
5 money, they got to prove that what they actually invented was
6 actually worth something. And that we don't think they're
7 going to be able to do. And we think that when you see the
8 evidence, I hope you'll agree with me that that's just not --
9 that's just not fair in this case.

10 So with that, let me tell you just a little bit about
11 Samsung. You know -- you know a lot about Samsung already.
12 And you know that they have -- they have facilities all over
13 the world. Mr. Sheasby got a little ahead of himself and
14 talked about some of Samsung's manufacturing, and they do,
15 they have manufacturing all over the world.

16 But, critically, ladies and gentlemen, they have
17 manufacturing right here in Texas. They have one of the
18 biggest semiconductor factories in the world here in Texas.
19 They make sophisticated microprocessors there. They're
20 building another one. They've got 6,000 employees here in the
21 state of Texas.

22 Mr. Sheasby says, well, you know, we asked the engineers,
23 they couldn't tell us how many patents they had. Well, ladies
24 and gentlemen, Mr. Calandra is here from Samsung and he's
25 going to tell you that they have 120,000 United States

1 patents. It's ridiculous for them to suggest that Samsung
2 doesn't have patents on its own products. Just ridiculous.

3 You know that Samsung makes lots and lots of great
4 products. They make refrigerators and ovens and their
5 award-winning telephones, their cell phones, and their TVs.
6 And Mr. Baxter seems to endorse those, and I agree with them.
7 They make the best TVs in the world. And they do all of that
8 to make our lives better. That's -- that's their whole
9 purpose in life.

10 And here's -- here's some of the memory products that
11 they make. It's not just the three classes of memory that
12 are -- that are talked about in this case. They make all
13 kinds of memory products because, ladies and gentlemen, we all
14 need them. Right? They fit into every part of our lives.

15 And here's that fab that I talked about that's in central
16 Texas where they make the most sophisticated microprocessors
17 in the world, and they're building another one here in Texas.
18 So to the extent that we're going to start throwing bricks
19 about where people are from, Samsung's got some pretty good
20 Texas roots.

21 So let's turn back to those two patents, the '918 and
22 '054. Let me tell you a little more about them. So I showed
23 you this. Remember that title is that flash DRAM
24 hybrid-memory module. And flash comes from the way the -- the
25 data is programmed. They used to use an actual flash. Now

1 it's flashed into the memory.

2 Dram is dynamic random access memory. You don't really
3 need to know anything more than it's a DRAM. That's what it
4 is. It's a particular kind of memory. It has to be
5 refreshed. It's a particular kind of circuit. You heard Mr.
6 Sheasby talk about DRAM circuits. You're going to hear a lot
7 about that in this case.

8 And as I told you, flash stores data for a long time.
9 DRAM doesn't. So when the power goes out, DRAM loses whatever
10 data you have and flash keeps it. So their idea was we're
11 going to move that data from the power -- somebody kicks the
12 cord, we're going to move the data away from the DRAM and into
13 the flash and that way you'll have it when the power comes
14 back. It's pretty -- pretty straightforward.

15 And that had been done before. What's shown here on the
16 screen is labeled prior art. You heard this morning they
17 talked about that we call things that were done before prior
18 art. We all know that you can't patent something that
19 somebody did before you. Right? I'd love to patent the
20 lightbulb. But I can't patent the lightbulb. Edison did it a
21 couple of centuries ago.

22 The improvement here, what -- what Mr. Milton and his
23 other inventors talked about, was we're going to come up with
24 a controller. We're going to come up with a way to quickly
25 move that information, and that way if the power is dying,

1 maybe you'll save more of it, that hybrid flash DRAM. That's
2 what they came up with.

3 But I've already shown you this. That's not what they
4 actually ended up with. That's how they started at the Patent
5 Office, but then we had continuation after continuation after
6 continuation. They were changing those claims. They were
7 pulling them in one direction and pushing them in another.
8 And what they ended up with is just not recognizable.

9 The '054 Patent is another continuation built beyond the
10 '918. So rather than 13 years, it goes almost 15 years in the
11 Patent Office.

12 And, ladies and gentlemen, again, the continuations are
13 part of the rules. You can file them. But what you can't do
14 is you can't abandon your invention. When you told the Patent
15 Office this was your invention, you wrote it down, that
16 written description requirement keeps you honest and keeps you
17 from going off and trying to claim things that you didn't
18 invent.

19 So what I've got up here on the screen is kind of
20 complicated, and I apologize about that, but this gives you a
21 little bit of a flavor of the evidence you're going to see in
22 this case.

23 Our expert is going to take you through that, and I have
24 him here. Mr. McAlexander is in the room.

25 There he is.

1 And I'll take you through his qualifications in a moment,
2 but he's going to guide you in this process because what we
3 have is the claim before, which was a volatile memory
4 subsystem. Well, that's a DRAM, ladies and gentlemen.
5 Another volatile memory system, that's a DRAM. And then we
6 have a non-volatile memory subsystem, that's a flash. So
7 that's how they started.

8 But then after a bunch of these continuations, where do
9 they end up? Well, they ended up in the afterside with first,
10 second, and third buck converters, a whole bunch of little
11 teeny circuits inside the part that had nothing to do with
12 moving memory or data from the DRAM over to the flash. And
13 that, ladies and gentlemen, is ultimately why these patents
14 are invalid.

15 Now, Mr. McAlexander is going to take us through that.
16 He's a wonderful expert. He's been around this business for
17 40 years. He started out as a circuit designer, a DRAM
18 circuit designer back at TI, and has really made this kind of
19 work his life's work. And he has done a mountain of studying,
20 he's looked at documents, he's looked at the depositions, and
21 he's going to take you through this process and help you get
22 to a decision about whether these patents are valid and then,
23 importantly, whether or not they're infringed.

24 Now, we've used that word 'infringement' a lot, but we
25 haven't really talked too much about what that means. And his

1 Honor had the example of the stool, which I like, but I have
2 my own example. What does it mean to infringe a patent?

3 Well, let's say Mr. Baxter has a patent on a soccer ball.
4 And the way patents work is that the claims at the end have
5 the elements that tell you what you own. It's your piece of
6 property. It's your deed, if you want to call it that. And
7 his patent on the soccer ball says it's got to be made of
8 leather, it's got to be stitched together, it's got to be
9 filled with compressed air, and it's got to be round. That's
10 his claim. That's what the Patent Office gave and that's what
11 he wrote down in his written description and that's what he
12 got out of the patent.

13 Now, I have a football. And he says, Hey, you're
14 infringing my patent. I say, no, I'm not.

15 How do we figure that out? Well, you go through each of
16 the elements and you do a comparison. So is my football made
17 of leather? Yes. Is it stitched together? Yes. Is it
18 filled with compressed air, outside of Tom Brady and, you
19 know, New England? Yes. But is it round? No, it's oblong.

20 And so if there's a difference, if there's a missing
21 element, there can be no infringement. And that's what you're
22 going to be asked to do. You're going to be asked to look at
23 these patents claims and compare it to the actual technology,
24 not articles, not what people say, not meeting notes, but the
25 actual technology, and you're going to be asked to decide

1 whether or not there's infringement in this case.

2 For the '918 and '054, we think that answer is going to
3 be no. You already know that the memory that we're talking
4 about here, the DDR5, which is double data rate 5 memory that
5 we're talking about here, is all DRAM. There's no flash,
6 ladies and gentlemen. So right away, and you have to kind of
7 wonder, because they -- what they put in their written
8 description was DRAM and flash. But, now, they're just
9 talking about DRAM. But that's the written description issue.

10 For infringement, we're going to focus on a couple of
11 different things, and I'm just going to highlight one or two
12 here for you. And I apologize. I know this is complicated.
13 But keep in mind, these are some of the most sophisticated
14 devices in the world, and we're going to have to go way down
15 deep because the patents that we're talking about here don't
16 tell you how to make a DRAM. That's absurd. They certainly
17 don't tell you how to fabricate one. They're talking about
18 little bitty circuits buried way down deep.

19 And so one of the little bitty circuits buried way down
20 deep is this notion of a converter circuit. The claims of the
21 '918 Patent require a converter circuit. And the converter
22 circuit, it does something very, very particular in that it
23 takes a voltage, and then using some complex circuitry, it
24 changes that voltage level. That's what it does.

25 What Samsung does is something completely different. It

1 doesn't use this complicated circuitry. It uses something
2 that's kind of crude. It just kind of burns off some power.
3 So it's like taking a light -- light fixture and putting a
4 shade on it. You're kind of just wasting some -- some light
5 there because it's too bright. And that's kind of what
6 Samsung does. And this thing is called an LDO, or linear
7 drop-out regulator.

8 And, again, I apologize about the jargon, but that's what
9 these patents are all about.

10 Mr. McAlexander will tell you the LDO is a little bit
11 like -- like just stepping on the brakes in your car. You
12 know, the pads hit the rotors and it heats up and you slow
13 down, but whatever energy you had is gone. You're just --
14 you're just creating some heat. Whereas, the converter
15 circuit of the patent is something much more sophisticated.
16 It's like, you know, if we have a standard car, you can
17 downshift. And when you downshift, you could slow the car
18 down, but you also need a transmission that can do that and an
19 engine that can handle it.

20 There's a lot more that goes into having a converter
21 circuit. You might get some energy back. Right? You can
22 recharge your batteries or run your air conditioners as you
23 downshift, but it's two different approaches. The Samsung
24 approach with an LDO is kind of crude. It just heats up and
25 throws away the energy. The converter circuit of the patent

1 is sophisticated, requires a bunch of switching circuitry, and
2 is more difficult.

3 THE COURT: Ten minutes remaining.

4 MR. CORDELL: Thank you, Your Honor.

5 So the bottom line is we are going to show you that a
6 converter circuit and an LDO are completely different. And if
7 there's a missing element, ladies and gentlemen, there can be
8 no infringement. You can look through this patent until your
9 eyes bleed and you will not see any mention of an LDO. It
10 talks about a converter circuit but not an LDO.

11 So for those two patents, the '918 and the '054, we are
12 going to ask you to find two things. We are going to ask that
13 you find they are invalid for failure to comply with the
14 written description requirement. They should have written
15 that idea down when they filed it in the Patent Office because
16 the claims now, through all those continuations, have moved
17 way off. They can't maintain validity anymore.

18 We're also going to ask that you find that there's no
19 infringement for the reasons I talked about.

20 Let's go to the '339 quickly. We have the same problem
21 with -- with the '339 about the written description
22 requirement. So we'll repeat a lot of that. But let me talk
23 a little bit more about -- about infringement for the '339
24 because it claims something very particular.

25 So, you know, as information is moving through these

1 chips, we call those data paths, and a data path is a little
2 bit like a road. And you can have roads that are straight and
3 you can have roads that have a fork in them. The '339 Patent
4 talks about the fork in the road. That's what it's all about.

5 It's talking about having two data paths where one is
6 enabled and the other is disabled. So you got to have two.
7 That's what the '339 is all about. And, ladies and gentlemen,
8 we just don't have that in the Samsung products.

9 What I've got up on the screen, and, again, I apologize
10 about the complexity and Mr. McAlexander is going to take you
11 through this, but it's a single pathway. You start at the
12 bottom and you can trace it if you want to. It goes right up
13 through to the top. It's one path. There's no fork in the
14 road, there's no Ts, there's no -- no choices. It's just
15 straight through. And this is on the Samsung DDR4 product.

16 But you don't have to take my word for it, ladies and
17 gentlemen, because it turns out that Netlist hired an expert,
18 Doctor Mangione-Smith, and he agrees with us. He agrees that
19 the Samsung products only have that single pathway. Well,
20 what do we know? We got a missing element, single pathway
21 when the claim says it's got to have two pathways, we got to
22 have a first and a second, then there can be no infringement.

23 There's another problem with the '339 Patent, and we
24 talked about this and you saw it in the video, you can't
25 patent what somebody else did before. And it turns out that

1 the idea of the '339 Patent had been done before by a company
2 called Kentron.

3 And we're going to show you a lot about this, and Mr.
4 McAlexander will take you through it, but this idea of a
5 distributed buffer architecture you're going to hear about a
6 lot of, and that was already done by a company called Kentron.
7 And you can't patent what somebody else has already done.

8 So for that, ladies and gentlemen, we're going to ask
9 three things on the '339: that you're going to -- you're
10 going to find the patent invalid for lack of a written
11 description, you're going to find that there's no infringement
12 because of the fork in the road, and that the patent is
13 invalid because you can't patent what the Kentron folks did
14 before in the QBM system.

15 So now let me turn to the last set of patents, the '060
16 and '106. Now, this is a little bit different because it
17 still involves, you know, kind of what they did at the Patent
18 Office and whatnot, but it's a little bit different because
19 they ran into a problem.

20 So when they filed the '060 and the '160 Patents, the
21 patent examiner said, un-huh, no thank you; we can't give you
22 a patent because somebody else has done this before. And what
23 they filed on was this notion that you're going to have
24 multiple die. They call them die because they take a silicon
25 wafer and they dice them up. They actually saw them up, using

1 lasers and stuff. But they -- because they dice them up, they
2 call each individual piece of silicon a die.

3 And they tell us right in the patent that people have
4 been making these for a long time. They've been putting one
5 on top of the other before. And Mr. Sheasby went on and on
6 about TSVs. Well, ladies and gentlemen, in their own patent,
7 this TSV, or the through-silicon via, as it's known, is shown
8 as being prior art. They did that long before Netlist came
9 along. So that's not the invention.

10 So the patent examiner said, well, you know, I looked at
11 your claim and I don't think I can let you have this patent
12 because other people like this fellow Rajan stacked these die
13 before, these little pieces of silicon, these were stacked up
14 before. You can't have the patent.

15 So Netlist said, well, okay, look, we're going to --
16 we're going to say that Rajan has these DRAM die, these little
17 pieces here, you can see they are labeled DRAM, we'll do
18 something else. Mr. Patent Examiner, we won't cover somebody
19 who's making one of these devices out of DRAM circuits. So if
20 you use DRAM circuits stacked one on top of the other, then
21 our patent won't apply to you.

22 That's what they told the Patent Office, ladies and
23 gentlemen. They said, Rajan doesn't disclose the plurality of
24 stacked array dies. They merely stack DRAM circuits, and they
25 actually called them out by number. And they said, those are

1 different from array dies.

2 Well, His Honor looked at all of this and came to a
3 conclusion about what the definition of array dies will be in
4 this case. And it's binding on us all. It's in your juror
5 notebooks. And what he said was, an array die has to be
6 something that is different from a DRAM circuit. I have to
7 live with that definition, Mr. Sheasby has to live with that
8 definition, and all of you do, too. So they need to show you
9 something that is different from a DRAM circuit.

10 But, ladies and gentlemen, that's not what they did. So
11 I don't know if you were watching closely, but Mr. Sheasby
12 showed you diagrams like this one on the right-hand side, and
13 what do they point to? They point to DRAM circuits. And,
14 ladies and gentlemen, that means that there's no infringement
15 in this case. They have to show you something that's not a
16 DRAM circuit. Remember, that was the deal they made with the
17 Patent Office, and that was the definition that Judge Gilstrap
18 gave that term. And they got to live with that.

19 So we also have Doctor Gabriel Robins, who's here, who is
20 going to help us with these two patents, and he will take you
21 through that in a lot of detail. He'll take you through
22 the -- the dRAM circuit issue and show you that they are
23 accusing DRAM circuits, and they can't do that. And that
24 means that there's no infringement.

25 There's another argument that I won't spend a lot of time

1 on, which is that there has to be communication between those
2 layers--right?--those stacked dies. You can't have
3 communication between all of them. And it turns out Samsung
4 does have communication between all of them. And so there's
5 no infringement for that reason as well.

6 So let me -- let me get to the last couple of issues
7 here. You know, Mr. Sheasby accused of all kinds of things,
8 and he said, oh, you know, Samsung took the technology;
9 samsung was -- was, you know, needed this technology.

10 Ladies and gentlemen, there is no evidence of that, zero
11 evidence. So if he's going to make a statement like that, he
12 better show you the goods. Instead, what did he show you? He
13 showed you this, and he said, aha, look, we found this in --
14 in Samsung's files.

15 But you got to look closely, ladies and gentlemen. What
16 is this talking about? Is this talking about the products in
17 this case, the DDR4 and 5 and HBM products? No. This is
18 talking about the hybrid DRAM and non-volatile flash memory
19 product. That was the product the parties were supposed to
20 work together on. Of course, there are documents like this.

21 And he said, well, you know, they're worried about patent
22 risk.

23 THE COURT: Two minutes remaining.

24 MR. CORDELL: And that's true because, you know
25 what? Samsung doesn't want to get sued. It's a big company.

1 Neither company wanted to worry about patent risk. And so
2 that's why they exchanged a patent license. So that's just
3 good prudent business there. We don't want to have -- go into
4 a relationship with somebody and give them the chance to sue
5 you.

6 So if I can go back to my slides.

7 You're going to -- you're going to hear more about the
8 joint development at some point. But keep in mind, ladies and
9 gentlemen, that this was the product that they were talking
10 about here. So when they show you documents, look carefully
11 at the date because that relationship lasted until July 15,
12 2020, as His Honor pointed out. So when they're showing you
13 documents before that, well, the parties were working together
14 trying to make this NVDIMM, which is that flash DRAM hybrid
15 product.

16 So, finally, you know, damages is something that we don't
17 like to talk about as defendants because we don't think we
18 infringe, and we think these patents are invalid, and there
19 should be no damages. But I'm a married man, been for 34
20 years. People will disagree with me from time to time. But
21 if you do, you have to be reasonable about it.

22 And we have hired our own damages expert, Mr. Paul Meyer,
23 who is one of the best known damages experts in the country,
24 and he has done a ton of analysis and will be able to explain
25 to you exactly what the damages are. But the one thing that

1 we can all be clear about is that \$8 million is kind of the
2 high water mark, and he's got a lot of analysis as to why it
3 should be less than that. But \$8 million is a reasonable
4 amount of money.

5 What's not a reasonable amount of money, ladies and
6 gentlemen is \$404,200,000. That's just not fair. That's just
7 not fair. Just because Samsung is a big company, you can't
8 just take advantage of them.

9 So with that, I'm going to thank you for your time and
10 attention, and we look forward to putting on the case. And
11 hopefully, you know, that you'll enjoy the week you have with
12 us. But, again, we really appreciate your time and service.
13 And on behalf of Samsung, I thank you.

14 THE COURT: Counsel, does either party wish to
15 invoke the Rule?

16 MR. SHEASBY: Plaintiff wishes to invoke the Rule,
17 Your Honor.

18 THE COURT: All right.

19 MR. CORDELL: Yes, sir.

20 THE COURT: And do I understand that's to exclude
21 experts from the Rule?

22 MR. CORDELL: Experts are not subject to the Rule is
23 what I understand.

24 MR. SHEASBY: Agreed, Your Honor.

25 THE COURT: All right. Which means for those

1 present, that if you are a fact witness, not an expert
2 witness, and you're not a designated corporate representative
3 representing one of the parties during this trial, then you
4 are to remain outside the courtroom until you are called to
5 testify.

6 And, Counsel, I will rely on you to keep an eye on those
7 behind the bar and let me know if anybody should be out of the
8 room who's not.

9 MR. CORDELL: We will, Your Honor.

10 THE COURT: Thank you.

11 Now, ladies and gentlemen of the jury, we're going to
12 take a short recess. And when we come back, we will hear from
13 the Plaintiff's first witness. You can simply close your
14 notebooks and leave them in your chairs. This is one of those
15 times I don't expect us to be out of the room very long.

16 Let me remind you follow all my instructions, including
17 not to discuss anything about the case with each other. And
18 we'll be back shortly. Use this opportunity to stretch your
19 legs and get a drink of water.

20 The jury's excused for recess.

21 (Whereupon, the jury left the courtroom.)

22 THE COURT: We'll keep this to approximately 10
23 minutes. The Court stands in recess.

24 (Brief recess.)

25 THE COURT: Be seated, please.

1 Plaintiffs, are you prepared to call your first witness?

2 MR. SHEASBY: Plaintiff is prepared to call their
3 first witness, Your Honor.

4 THE COURT: Let's bring in the jury, please.

5 (Whereupon, the jury entered the courtroom.)

6 THE COURT: Welcome back, ladies and gentlemen.
7 Please have a seat.

8 Plaintiff, call your first witness.

9 MR. SHEASBY: Your Honor, Plaintiff Netlist calls
10 Mr. Scott Milton, vice president of research.

11 THE COURT: Mr. Milton, if you'll come forward and
12 be sworn by the Courtroom Deputy, please.

13 (Whereupon, the oath was administered by the Clerk.)

14 THE COURT: Please have a seat here, sir, on the
15 witness stand.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: You are welcome.

18 THE WITNESS: Does this sound okay?

19 THE COURT: That's fine.

20 THE WITNESS: All right.

21 THE COURT: Mr. Sheasby, you may proceed with direct
22 examination.

23 MR. SHEASBY: Thank you.

24 SCOTT MILTON, SWORN,
25 testified under oath as follows:

DIRECT EXAMINATION

BY MR. SHEASBY:

Q. Good afternoon, Mr. Milton.

A. Good afternoon, Mr. Sheasby.

Q. Can you introduce yourself to Judge Gilstrap and the jury, please?

A. Definitely. Your Honor, ladies and gentlemen of the jury, my name is Scott Milton, and I am the vice president of engineering at Netlist. And that is our highest technical position at the company.

Q. Now, do you have a personal connection to this case separate from your role as the -- an officer of Netlist?

A. Yes, I do. I am an inventor on one of the patent families, and I was also the technical interface with Samsung on the JDLA.

Q. And what is the history of Netlist?

A. So Netlist was founded in the year 2000. And at that time there were a couple of very large companies, Samsung and SK hynix, that were really dominant in the memory industry, selling modules and the raw components.

We at Netlist found that there was some room to innovate in the area of the modules, which is what the raw memory components go on, and we founded a company to -- to do that.

Q. Can you show us an example of a Netlist module?

A. Yes. So it's a little hard to see, but this is an

1 example of one of our DDR5 memory modules, which we talked
2 about earlier. And this in particular is what we call a VLP,
3 and what that stands for is very low profile. The standard
4 modules are about an inch-and-a-half. This one's like .72
5 inches. But this is an example of a Netlist product.

6 Q. What patents does Netlist believe Samsung infringes?

7 A. So we believe that there are three patent families that
8 are being infringed. The first patent family has to do with
9 on-module power management, and those patents are the '918 and
10 the '054.

11 Q. What's the second family?

12 A. The second family has to do with load reduction DIMMs, or
13 called LRDIMMs, and that patent is the '339 Patent.

14 Q. And what's the third family of patents?

15 A. So the third family of patents has to do with what were
16 called grouped array dies with TSVs and data ports. And we'll
17 explain what all that means, and those are the '060 and '160
18 Patents.

19 Q. And we're referring to patents by their last three
20 digits. Is that correct?

21 A. That is correct, sir.

22 Q. Can you tell us a bit about yourself?

23 A. Yes. So I already mentioned, my name is Scott Milton. I
24 grew up and went to school in Orange County, California, which
25 is very close to where our headquarters is for Netlist.

1 I received my Bachelor's of Science in electrical
2 engineering from UCLA. I then received a Master's degree in
3 electrical engineering from USC.

4 I started to work at Netlist in 2003. And throughout the
5 time there, we probably designed, oh, in excess of a hundred
6 different types of memory modules.

7 You know, giving you some more personal information about
8 me, I'm married. I've got three grown children, and one
9 grandchild that's about a year old.

10 Q. Congratulations, Mr. Milton.

11 A. Thank you.

12 Q. Who led the technology team at Netlist before you?

13 A. So we have a couple of gentlemen. The first is Mr. Jay
14 Bhakta. Jay was actually a founder of Netlist, a very
15 prolific designer, a UCLA alumnae like myself, and in fact a
16 very good friend of mine. Unfortunately, he passed away from
17 a -- from a sudden heart attack. But before that, he was
18 actually able to see both of his children work at Netlist for
19 a time. And, in fact, his son is now a professor of
20 engineering, I believe, at Richmond University.

21 Q. And who is Doctor Lee?

22 A. So Doctor Hyun Lee, before he came to Netlist, he was
23 actually a researcher at Bell Labs. And if you don't know
24 Bell Labs, they actually invented the transistor there and
25 they also hold nine Nobel prizes. Doctor Lee, unfortunately,

1 had to retire to take care of his sick wife, and in later
2 years I hear that he's become a pastor.

3 Q. What does this slide depict?

4 A. Right. So this slide here shows several of the -- excuse
5 me -- several of the companies that we've sold our memory
6 modules and memory products to. You can see here
7 Hewlett-Packard, Dell, Apple, IBM, all very big name
8 companies, and we're very proud of the fact that a company our
9 size is both qualified and has sold products to these
10 companies.

11 Q. Defendants' counsel in opening indicated that no one
12 wanted Netlist products. Over Netlist's life as a business,
13 about how much product has it sold?

14 A. So life -- since inception in 2000 until today, I believe
15 we're somewhere north of \$1.1 billion in sales.

16 Q. And counsel for Defendant also suggested that no one
17 wanted your NV products. How much NV product have you sold?

18 A. I believe that number's about \$30 million.

19 Q. And have you shipped NV product to Samsung?

20 A. We did ship some NV product to Samsung.

21 Q. Where's Netlist headquartered and what is its size?

22 A. So, as mentioned, we're in southern California, in Irvine
23 specifically. We've got about 120 folks, and 30 of those are
24 engineers.

25 Q. At some point in time, did a senior executive from

1 Samsung visit Netlist to propose entering into a joint
2 development agreement?

3 A. Yes. So Doctor J.B. Lee visited Netlist in 2015 to
4 discuss a potential partnership.

5 Q. And what was J.B. Lee's position at the time?

6 A. At the time he was in charge of Samsung's products
7 determining what products to design and sell.

8 Q. And what is his position now?

9 A. Now he is president of Samsung.

10 Q. And I'm showing you JTX 029. What is this document?

11 A. So this is the joint development and license agreement
12 that we signed with Samsung.

13 Q. Is Netlist bringing infringement claims on any Samsung
14 product that was the subject of the joint development part of
15 the agreement?

16 A. No, we are not.

17 Q. And who signed the agreement on behalf of Samsung?

18 A. That would be Dr. J.B. Lee.

19 Q. In terms of the investment that was made in this joint
20 development, who invested more money--you or Samsung?

21 A. The Netlist side invested more money.

22 Q. Did Samsung contribute any innovation to this project?

23 A. They did not. They just reviewed the technology that we
24 showed to them.

25 Q. Did Samsung's vector group recognize the importance of

1 the Netlist's technology?

2 A. Yes, they did.

3 Q. How did that happen?

4 A. They invested \$15 million in the company.

5 Q. When was that in relationship to when this agreement was
6 signed?

7 A. It was -- it was after the agreement was signed.

8 Q. What has Netlist done with that investment subsequent to
9 the termination?

10 A. We actually repaid it back with interest.

11 Q. Now, the first family of patents you spoke about were the
12 '918 and '054 Patents. Is that correct?

13 A. That's correct, sir.

14 MR. SHEASBY: Mr. Huynh, if we can have slide 16,
15 please.

16 Q. (BY MR. SHEASBY) And these are the two patents. Is that
17 correct?

18 A. That is correct, sir.

19 Q. When were they originally filed and when did the Patent
20 Office make them available to the public to review?

21 A. So the -- the application was filed, as we see here, on
22 June 2nd, 2008, and the first patent in the family was
23 published in October 30th, 2012.

24 THE COURT: Mr. Sheasby, pull the microphone a
25 little closer to you, please.

1 MR. SHEASBY: Yes, Your Honor.

2 THE COURT: Thank you.

3 Q. (BY MR. SHEASBY) So you describe this as intelligent
4 power management, and we're going to have a strict rule to
5 define all your terms. So please define.

6 A. Absolutely. So what we're calling our product or our
7 invention in this case is intelligent on-module power
8 management. So if we take all those terms and break them
9 down, today's memory modules are, you know -- have a lot of
10 advancements, and all these components that we see here on
11 this module, they all require very precise amounts of power.

12 Now, that power is delivered through what we call
13 voltage. So each of these components have a voltage
14 requirement that, up until our invention started to be
15 ubiquitous in the industry, those voltages were provided from
16 the server or the system. If we saw that earlier, the
17 computer essentially would be responsible for providing those
18 voltages.

19 What our idea was is to take that circuitry and move it
20 to the module. So that's what the on-module part of the
21 invention is.

22 Now, what that allows you to do, in addition to now
23 having a lot of control over what those voltages are so we can
24 provide that precise power, we can actually control it with a
25 controller circuit, and we also have a lot of flexibility

1 because now that the generation of all of those voltages are
2 on the module, if something changes on the module, we can
3 actually make changes to the power delivery on the module and
4 not have to redesign the system. So, you know, we thought
5 that was a pretty good idea.

6 And the third thing, which is by far not the least, is by
7 having this all in the module, we're able to monitor those
8 voltages and detect problems. In event of a problem being
9 detected, we can take action on that and move into, you know,
10 a different mode of operation in order to handle like a power
11 fault or something of that nature.

12 Q. Does the patent expressly describe the strategy of
13 placing the power control on-module?

14 A. Yes, it does.

15 Q. I'm going to show you a passage from the patent. This is
16 column 26, lines 26 through 35. Can you explain this?

17 A. Yes, I can. So if we have the figure, what this shows is
18 that the power supply may be located on the same printed
19 circuit board or it may be located somewhere else, but the --
20 the key point is that it could be in either location.

21 It's -- we're not saying that it has to be one or the other.
22 So part of it could be on a separate board or it could all be
23 on one board.

24 Q. I'm going to show you another passage from your patent.
25 This is column 27, lines 41 through 58. Does this depict

1 another aspect of your invention?

2 A. Yes. So if you see here, this is -- this is an example
3 of when a fault is detected, the system can, you know, with
4 the controller on the module, we can detect that and take an
5 action. In this case, the action that we're taking is taking
6 that data from that volatile subsystem and writing it to a
7 non-volatile location, like a disk drive, and that disk drive
8 actually is somewhere else in the system. It's not in the
9 module in this case.

10 Q. Does this patent teach that the -- what does this patent
11 teach as to where the flash or non-volatile memory can be?

12 A. So in this particular case, the non-volatile memory or
13 flash is not on the module. It's somewhere else in the
14 system.

15 Q. Now, this describes a state in which the -- the DRAM is
16 not operating. Is that correct?

17 A. That's correct. So a key factor of the invention is, you
18 know, since we're detecting a fault with one of the power
19 rails, that could be the fact that that rail is now off so
20 some of the components are no longer powered. So we still
21 need to be able to take action in that case, and this is an
22 example of that type of an action.

23 Q. Is the operable state in which the DRAM is not running a
24 critical feature in your design?

25 A. That's correct. You know, another thing that can be done

1 as well is the fact that, once that fault is detected, you may
2 want to know when the system powers up again, what happened.
3 So one of the things that we teach is that in the event of a
4 power fault, we'll actually write some information to
5 non-volatile memory so that when the system powers up, we can
6 read that back and -- and understand one of the voltage rails
7 failed or maybe something else had occurred that caused that
8 failure.

9 Q. What was your role in the preparation of the patents on
10 which you're an inventor?

11 A. All right. So just a little bit on -- on how we develop
12 patents. So as an engineer working along with my colleagues,
13 we'll come up with -- with ideas as we work to design our
14 products. And what we'll do is we'll meet with some, you
15 know, professionals in the area. You know, I myself am not a
16 lawyer. I don't know all of the details of how you write the
17 final patent. But what we do provide is all of the technical
18 details. You know, sometimes that will just be a conversation
19 that we have or maybe it will be a written discussion. And
20 then those legal professionals will go ahead and write up
21 the -- the specifications and -- and draft the claims. And
22 then, you know, we'll review that, and then we'll hand it off
23 to them and let them finish up the process.

24 Q. Do you review the final application?

25 A. Not usually. There's not much that I can add at that

1 point. We've already given all the information that we can
2 provide, and, you know, I really can't provide any other input
3 on, you know, the details of how the patent language is
4 written.

5 Q. Do you generally review claims before they are presented
6 to the Patent Office?

7 A. The claims, yes.

8 Q. Does your patent list the type of memory modules that can
9 be applied to?

10 A. Yes, it does.

11 Q. I'm going to show you a passage. This is column 21,
12 lines 24 through 55 of your patent. And what are some of the
13 classes of memory modules that your patent teaches that can be
14 applied to?

15 A. Yes. So as you can see on the -- on the monitor here,
16 there's three that are listed. The small-outline, or SO-DIMM,
17 the unbuffered, or UDIMM, and the registered, or RDIMM.

18 Q. What categories of Samsung products does Netlist believe
19 infringe these patents?

20 A. We believe that all three categories that are shown here
21 infringe the -- our -- our patent.

22 Q. So to be specific, what are the three categories of
23 product that Netlist sells?

24 A. Yes. So, again, it's the SO-DIMM, the UDIMM, and the
25 RDIMM.

1 Q. I said Netlist. But to clarify, what are the three -- I
2 think we both confused each other. I apologize.

3 A. Oh, yeah, yeah. The products that Samsung sells?

4 Q. Let me re-ask the question, Mr. Milton.

5 A. Thank you, sir.

6 Q. What are the three products -- categories of products
7 that Samsung sells that Netlist believes infringe the patent?

8 A. Yes. So sorry about that. But, yes, it's the SO-DIMM,
9 the UDIMM, and the RDIMM.

10 Q. And the generation of products -- did Samsung ever
11 provide any feedback on the importance of Netlist's on-module
12 intelligent power management inventions?

13 A. Yes, they did.

14 Q. And I'm showing you PX 586. Do you recognize this?

15 A. I do.

16 Q. What is PX 586?

17 A. So this is an email that was sent from Samsung to Netlist
18 requesting a meeting with our technical team to talk about
19 specifically power management IC for DDR5 DIMM.

20 Q. And what category of -- of memory is Samsung's accused
21 products?

22 A. The DDR5.

23 Q. That's Samsung's DDR5 design.

24 A. That's correct.

25 Q. Now, were you at the meeting referenced in this email?

1 A. I was not.

2 Q. And do notes of this meeting exist?

3 A. Actually no. But, you know, the obvious question to ask
4 is, you know, did we have the meeting. You know, in fact, we
5 were meeting with Samsung fairly regularly so I would assume
6 that this meeting did occur.

7 Q. Was it common or uncommon for Samsung to discuss module
8 power management with Netlist?

9 A. It was common.

10 Q. Did -- are there any awards for patents in the memory
11 module industry?

12 A. No. You know, it would be nice if somebody gave us an
13 award, but that's not what happens. Really the type of
14 recognition that you get for intellectual property in patents
15 is how widely it gets used in the industry. So the fact that
16 a company the size of Samsung actually came to us to talk
17 about on-module power management is some pretty good
18 recognition in itself.

19 Q. And did Samsung eventually launch a Samsung design, DDR5
20 module, with on-module power management?

21 A. Yes, they did.

22 Q. And is this JTX 24 reflecting that?

23 A. Yes, sir.

24 Q. And about how many years is that after Netlist -- Samsung
25 reached out to Netlist?

1 A. So from 2019 to, I think it was, 2022.

2 Q. Have you actually examined the products that are accused
3 of infringement in this case?

4 A. Yes, I have.

5 Q. Do they have non-volatile memory on them?

6 A. They do in the power management circuit. There
7 is -- when I talked previously about having that non-volatile
8 memory in order to save information about a possible fault,
9 that's where that non-volatile memory resides.

10 Q. And do they have a multichannel -- a memory channel
11 interface on them?

12 A. Yes, they do.

13 Q. So I want to show you another document. This is PX 621.
14 Do you recognize this document?

15 A. Yes, I do.

16 Q. What is this document?

17 A. So this is from a presentation that was provided to
18 Samsung.

19 Q. And I'm going to show you a page from this document. I
20 showed it in opening. It says, intelligent on-module power
21 distribution. Do you see that?

22 A. I do.

23 Q. And at top, it says, seminal patents for NV and memory
24 channel interface?

25 A. That is correct.

1 Q. How does NV and memory channel interface relate to
2 Samsung's DDR5 products?

3 A. So, as mentioned, we believe that DDR5, all modules
4 include NV in them, and all modules include the memory channel
5 interface.

6 Q. And by all modules, you mean all of Samsung's modules?

7 A. That is correct.

8 Q. And so if Samsung's Defendant -- the Defendants' counsel
9 was suggesting that this presentation has nothing to do with
10 Samsung's DDR5 designs, do you -- do you agree with that or do
11 you disagree with that?

12 A. I disagree with that. You know, the fact of the matter
13 is --

14 MR. McKEON: Objection, lack of foundation.

15 THE COURT: Overruled. Let's continue. Restate
16 your question, Counsel.

17 MR. SHEASBY: Sure.

18 Q. (BY MR. SHEASBY) Do you believe -- do you agree or
19 disagree with Samsung's counsel when he represented that
20 seminal patents for NV and memory channel interface have
21 nothing to do with Samsung DDR5?

22 A. Yes, I disagree with that statement. The reason why I
23 disagree with that statement is because the --

24 THE COURT: Just a minute, Mr. Milton. He didn't
25 ask you why you disagreed.

1 THE WITNESS: Oh.

2 THE COURT: He asked you if you agreed or not. If
3 he wants to know why you disagreed, he'll ask you the next
4 question.

5 THE WITNESS: I'm sorry, Your Honor.

6 THE COURT: That's all right.

7 Go ahead, Counsel.

8 Q. (BY MR. SHEASBY) Mr. Milton, why do you disagree?

9 A. So I disagree because the circuitry that we developed
10 that on-module power management that we use for our NV
11 products is now being used on the DDR5 products.

12 Q. I want to show you another document. This is PX 1663.
13 This is a document that was provided to Netlist. Is that
14 correct?

15 A. That is correct.

16 Q. And it's a document prepared by Samsung. Is that
17 correct?

18 A. That is correct.

19 Q. And it refers to Netlist patents related to memory
20 modules RDIMM and LRDIMM. Do you see that?

21 A. I do, sir.

22 Q. What are the two categories of products that are at issue
23 in this case?

24 MR. McKEON: Your Honor, I'm going to object. Lack
25 of foundation that this witness knows anything about this

1 email. He's not on the email. No foundation laid for that.

2 THE COURT: What's your response, Mr. Sheasby?

3 MR. SHEASBY: Well, he was the corporate
4 representative. He's the corporate representative on this
5 topic, but I'm happy to lay a foundation as well. He was the
6 30(b)(6) on this.

7 THE COURT: I'm going to overrule the objection.
8 He's here to speak for Netlist as their corporate
9 representative.

10 And, Mr. McKeon, you can certainly probe this on cross
11 examination, but I'm not going to sustain the objection.

12 MR. McKEON: Thank you, Your Honor.

13 Q. (BY MR. SHEASBY) So just to set the stage, we are
14 looking at PX 1663. And who prepared PX 1663?

15 A. That was prepared by Samsung.

16 Q. And it relates to patent -- it describes Netlist patents
17 related to memory modules RDIMM and LRDIMM. Do you see that?

18 A. I do, sir.

19 Q. And it refers to going forward. Do you see that?

20 A. I do.

21 Q. What are the two categories of products that Netlist
22 believes Samsung is infringing?

23 A. The RDIMM and the LRDIMM.

24 Q. Now, did Samsung have to search to find out if Netlist
25 was seeking patents on on-module power management?

1 A. They did not. We provided that information to them.

2 Q. And I want to show you this. Is this an example of how
3 you provided that information?

4 A. Yes. Yes, sir.

5 Q. So this is PX 621. And what does it say?

6 A. Well, it says that one of the items is intelligent
7 on-module power management -- or power distribution. Excuse
8 me.

9 Q. And I want to show you another presentation document.
10 This is PX 1756. Who prepared this document?

11 A. This was also prepared by Samsung.

12 Q. And what did -- how did Samsung describe your technology?
13 This is from 2019. Is that correct?

14 A. Yes, sir.

15 Q. It's before this lawsuit was filed?

16 A. Yes, sir.

17 Q. And how did Samsung describe your technology before this
18 lawsuit was filed?

19 A. So as underlined, it says that we had unique proprietary
20 know-how.

21 Q. Are you familiar with how -- with the history of how the
22 '918 and '054 Patents were granted by the United States Patent
23 and Trademark Office?

24 A. Yes, sir.

25 MR. SHEASBY: Go to slide 35, Mr. Huynh.

1 Q. (BY MR. SHEASBY) And you said that these -- their parent
2 was in June 2nd, 2008. Is that correct?

3 A. Yes, sir.

4 Q. Have you heard the term 'priority'?

5 A. I have.

6 Q. What does it mean to claim priority in 2008?

7 A. So what that means is when we created our original
8 application back in 2008, there was a lot of different
9 inventions in there. And what we're saying is that with the
10 new claims that we filed, that they were actually invented on
11 the date the application was filed.

12 Q. And has the United States Patent Office granted a number
13 of patents based on that original application filed in 2008?

14 A. Yes, they have.

15 Q. And are these an example of some of those patents that
16 have been granted?

17 A. Yes, that is the case. If you see here, we've got
18 the -- you know, again, using the last three digits, the '833,
19 the '684, the '186, and now the '918 and '054.

20 Q. Now, every time you get a new patent, do you get a new
21 term that lasts for 20 years?

22 A. No. The way it works, because of the fact we are going
23 back to that original application, you only get 20 years from
24 the date of the application.

25 Q. So even if you get subsequent patents later on, it's

1 still 20 years from 2008?

2 A. That is correct.

3 Q. Do you have personal knowledge about --

4 THE COURT: Mr. Milton, if you'd like to pour some
5 water, you are certainly free to do that.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: I see you brought your own. That's
8 fine, too.

9 Go ahead, Counsel.

10 Q. (BY MR. SHEASBY) Do you have personal knowledge about
11 how it was possible to obtain multiple patents based on the
12 patent application Netlist filed in 2007?

13 A. Yes.

14 Q. 2008, excuse me.

15 A. Yes, I do.

16 Q. Can you explain that?

17 A. Yeah. So, again, the way it happens is we filed our
18 application back in 2008, and it covered a lot of different
19 topics. So what we did is we started coming up with claims
20 for the various inventions and then getting patents as we
21 went.

22 Q. And where did those claims have to be disclosed?

23 A. They all had to be disclosed in that original
24 application. The Patent Office doesn't let you just make up
25 new claims that have no basis in the application; they always

1 have to go back to that application. Otherwise, it's going to
2 have to be a new priority date.

3 Q. I'm going to show you PX 1816.

4 First off, do you recognize this document? Yes or no.

5 A. Yes, I do, sir.

6 Q. And is this a document from the prosecution history for
7 the '918 Patent?

8 A. Yes, it is.

9 Q. And what is the prosecution history?

10 A. So the prosecution history is the list of all of the
11 office actions and all the activities that surround a
12 particular patent.

13 Q. And what type of document are we looking at on this page,
14 PX 1816 at page 118 through 120?

15 A. Yes. So this is what's called a restriction requirement,
16 and it's the way for the U.S. Patent and Trademark Office to
17 let the prospective inventor know that they've got too many
18 items in their application, that they need to break it up into
19 multiple patents.

20 So what it's saying here is that the claims we had in
21 that original application on power modules were not part --
22 you know, they basically were entitled to their own patent.
23 So they had to be broken out by this particular requirement so
24 that they would have a separate patent from the other
25 inventions that were in that application.

1 Q. Did the Patent Office recognize the on-module power
2 management in the patents as a distinct invention exactly?

3 MR. McKEON: Objection. Leading on that one.

4 THE COURT: Sustained. I'll sustain the objection
5 to leading.

6 MR. SHEASBY: Thank you, Your Honor.

7 THE COURT: Restate the question in a non-leading
8 form.

9 MR. SHEASBY: Absolutely.

10 Q. (BY MR. SHEASBY) What was the Patent Office's views
11 about the on-module power management inventions?

12 A. Yes. So by the fact that the Patent Office created this
13 restriction requirement, they were telling us that the
14 on-module power management claims were actually -- had
15 separate utility, meaning they can be used in other places,
16 and that we needed to have a separate patent for them.

17 Q. And that's what this language is that we're showing on
18 the screen?

19 A. Yeah. That's correct. Where we're saying the "claims 21
20 through 36 drawn to a power module, including a voltage
21 conversion element," all that language is saying that that
22 needs to have its own patent.

23 Q. Did Netlist ultimately proceed to obtain patents on its
24 unique on-module power management invention?

25 A. Yes, we did.

1 Q. And how did Netlist do this?

2 A. So we took the new set of claims along with the
3 application from 2008, presented it to the Patent Office,
4 which they reviewed because, again, you can't just create
5 your claims out of nowhere; they have to be based in the
6 application; the folks at the Patent Office reviewed it and
7 found that we had a valid patent claim.

8 Q. And I'm looking at page 131 of this patent, this
9 document. What is this depicting? What is this showing?

10 A. So this is showing that we do have that priority date of
11 that June 2nd, 2008.

12 Q. So that's the priority date you requested. Is that
13 correct?

14 A. That is correct.

15 Q. And did the PTO grant or reject the claims ultimately?

16 A. We -- they granted us the patent. Those are the patents
17 we are talking about today, the '918 and the '054.

18 Q. The next family of patents that you discussed was the
19 '339 families. Is that correct?

20 A. That is correct.

21 MR. SHEASBY: Mr. Huynh, can we turn to slide 43,
22 please?

23 Q. (BY MR. SHEASBY) When was the '339 Patent -- parent
24 originally filed?

25 A. It was originally filed in 2009.

1 Q. And what does this family relate to?

2 A. So this family relates to what we call load reduction
3 DIMMs or LRDIMMs.

4 Q. And is this -- this is the patent itself, JTX 0002?

5 A. Yes, sir. That is the '339 Patent.

6 Q. And I want to show you a passage from it. So I'm showing
7 two things. I'm showing figure 3A as well as 7, lines 44
8 through 55.

9 A. Uh-huh.

10 Q. What is this figure and the language associated with it
11 depicting?

12 A. So what this figure is showing is a kind of a
13 representative view of what the load reduction module looks
14 like. What we see in figure 3A are orange boxes which
15 represent the DRAM components, and then along the bottom edge
16 the blue boxes, those are the buffer devices that provide the
17 isolation or the load reduction.

18 Q. Now, you need to define a term. Load reduction, please,
19 Mr. Milton.

20 A. Right. So if we go ahead and start from the bottom of
21 this figure--if you'll bear with me I think we'll get
22 there--but at the very bottom we see there something called
23 the system memory controller, and that is the part of the
24 computer system that's responsible for reading and writing to
25 the memory modules.

1 As we proceed up to the modules, what we're showing is
2 that in one memory channel there's actually four of these
3 memory modules or DIMMs that are populated in that channel,
4 and that's denoted by the fact that if you look at the upper
5 right it says 402, and there's four lines going out from that
6 402. Each one of those is basically a copy of the one that's
7 on top that you see with the all the DRAM and the buffer
8 circuits.

9 And if you can imagine -- you know, if you think about
10 loads as kind of being a weight, so if you have, for example,
11 one of these modules and you didn't have the buffer circuits,
12 you would have four loads on the memory controller. And as
13 you keep adding more modules, you're adding more loads. And
14 much like, you know, carrying weights, it makes it much
15 heavier to go fast if you have a lot of weight.

16 So what we came up with was the idea of providing load
17 isolation or load reduction by adding these buffer components,
18 the blue ones on the bottom. So what that allows us to do is
19 only -- well, it allows the system to see only one load. So
20 compared here instead of, you know, having -- if you see in
21 the rows there's four DRAMs in the rows -- I'm sorry. In the
22 columns. Excuse me. Instead of having four loads per module,
23 16 loads, now we're only going to have four loads and we can
24 get that higher performance and run at much higher speed.

25 Q. Does the invention have separate data paths that can be

1 turned on and off?

2 MR. McKEON: Your Honor, object. We don't have an
3 expert report, this is not his patent, and we're going way
4 beyond factual testimony here.

5 MR. SHEASBY: Your Honor, he was the corporate
6 representative on this patent family, he's designed products,
7 and he testified at deposition regarding this exact patent
8 family.

9 THE COURT: Well, it's not uncommon to have somebody
10 with a technical background that is a fact witness who's not
11 formally an expert but knows a whole lot more than most people
12 off the street, and this gentleman obviously falls in that
13 category. He is not entitled to give opinion testimony, he's
14 not qualified as an expert, but he certainly has a degree of
15 personal knowledge that exceeds what might otherwise be
16 expected in an ordinary fact witness.

17 At this point I'm going to sustain the objection -- I
18 mean I'm going to overrule the objection, but Mr. Sheasby,
19 you're going to have to hew a careful line not to stray into
20 opinion testimony that only an expert can give.

21 MR. SHEASBY: Sure. I understand, Your Honor's
22 instructions, Your Honor.

23 THE COURT: All right.

24 MR. SHEASBY: I'll withdraw the question and re-ask.

25 THE COURT: Let's proceed.

1 Q. (BY MR. SHEASBY) In Netlist's technology, does it allow
2 for separate data paths that can be turned on and off?

3 A. Yes. So part of -- you know, part of adding these
4 buffers at the bottom of the module necessitates that you have
5 to be able to control them. You might imagine that if you
6 didn't have a device before and then you add one, there's some
7 additional things that you have to do for the memory
8 controller to be able to interface with the module. So
9 because of that, we have a control system where --

10 THE COURT: Let me stop you, Mr. Milton.

11 THE WITNESS: Yes, sir.

12 THE COURT: The question was does it have separate
13 data paths, and your answer was yes.

14 THE WITNESS: Yes.

15 THE COURT: "So part of -- you know" and then you
16 start into this long explanation, that's not called for by the
17 question. I guarantee you Mr. Sheasby is capable of asking as
18 many follow-up questions as he needs to get out the
19 information he wants this jury to hear, but you need to
20 respond to his questions and not gratuitously volunteer more
21 than the question calls for. All right?

22 THE WITNESS: All right. I apologize, Your Honor.

23 THE COURT: Wait for him. That's his job to know
24 whether to ask the right questions or to not ask the right
25 questions. So make your answers responsive to his questions,

1 please.

2 THE WITNESS: Very good. Thank you, Your Honor.

3 THE COURT: All right. Let's go forward,
4 Mr. Sheasby.

5 Q. (BY MR. SHEASBY) How are the separate data paths
6 achieved?

7 A. So if we're talking to the top module, for example, that
8 would be the first path, and all of the other modules would be
9 turned off. Those paths to those modules are disabled.

10 Q. And by 'modules', you're meaning those pink boxes in 402.
11 Is that correct?

12 A. That's correct; the 402 with the four lines going from
13 them.

14 Q. And I want to show you this. What does this depict?

15 A. So this depicts the actual implementation of the load
16 reduction DIMM. The orange boxes are the same DRAM components
17 that we saw on the previous drawing, but this is actually
18 implemented on the module itself; and, likewise, the blue
19 boxes are those isolation or load reduction devices.

20 MR. SHEASBY: And this is -- for the record, this is
21 column 7, lines 44 through 55 as well as figure 3D.

22 Q. (BY MR. SHEASBY) Is that correct, sir?

23 A. Yes, sir.

24 Q. I want to show you a presentation. This is PX 464.

25 Did Netlist provide this presentation to the now president

1 of Samsung memory, J.B. Lee?

2 A. Yes, we did.

3 Q. And when was it provided?

4 A. In 2015.

5 Q. And does this patent disclose the patent family that
6 ultimately resulted in the '339 Patent?

7 A. Yes, it does.

8 Q. Can you explain the relationship between the 8,417,870
9 patent on this presentation and the '339 Patent?

10 A. Yes. The '870 is a parent patent of the '339.

11 MR. SHEASBY: For the record, this is PX 464.

12 Q. (BY MR. SHEASBY) And who was this presentation given to?

13 A. To Samsung.

14 Q. And what does this show about the relationship between
15 the '339 and the '870 Patent that was given to Samsung?

16 A. Yes. This is showing that the '339 is related and can
17 claim priority back to the '870 Patent.

18 Q. Now, did Samsung have to search to find Netlist's
19 patents?

20 A. No, they did not.

21 Q. Why is that?

22 A. Because we provided this information to them that shows
23 the products and the patents that we believe relate to them.

24 Q. And at the top it says 'LRDIMM'. Is that correct?

25 A. Yes, sir.

1 Q. And what product is accused of infringing the '339 Patent
2 family?

3 A. It is the LRDIMM.

4 Q. Can you explain how Netlist came to be able to obtain
5 multiple patents on this family?

6 A. Yes. Very similar to what we had discussed previously
7 with the on-module power management, with the '870 Patent, we
8 had an original application and that application had multiple
9 inventions in it, and the USPTO asked us to file separate
10 patents for each of those inventions.

11 Q. And I'm showing you a page from JTX 43 at pages 1 and 80.
12 What is this document?

13 A. So this is the prosecution history for the patent, the --
14 yeah. I'm sorry. For the '339 Patent.

15 Q. And explain again what a prosecution history is.

16 A. That's the -- contains all of the information about how
17 the patent is being worked on and leading up to being granted.

18 Q. And what did Netlist state to the Patent Office about
19 what the priority date of its application was?

20 A. In the highlighted area on the bottom you can see it's
21 7/16/2009.

22 Q. Did Samsung make any formal statements in its documents
23 about the importance of Netlist's LRDIMM patents?

24 A. Yes, they did.

25 Q. I want to show you this document. This is PX 1756. And

1 who prepared this document?

2 A. This was prepared by Samsung.

3 Q. And what does it state regarding Netlist's LRDIMM
4 technology?

5 A. So it's stating that Netlist has a -- or is known in the
6 industry to have created a system for LRDIMM technology.

7 Q. And this is PX 1756. Is that correct?

8 A. That is correct, sir.

9 Q. And did Samsung make statements on whether it planned on
10 using Netlist's LRDIMM patents in these same documents?

11 A. Yes, they did.

12 THE REPORTER: I'm showing you another page from
13 1756. This is page 4. What did --

14 THE COURT: Could you slow down, Mr. Sheasby?

15 MR. SHEASBY: Yes, Your Honor.

16 THE COURT: You're pretty fast over there.

17 MR. SHEASBY: Yes, Your Honor.

18 THE COURT: Thank you.

19 Q. (BY MR. SHEASBY) I'm showing you another page from
20 PX 1756. What is this depicting?

21 A. So this is stating that for the LRDIMM patents in
22 particular, that Samsung wants to enter into a license
23 agreement so they don't have to pay a separate royalty.

24 Q. And it's referring to LRDIMM patents. Is that correct?

25 A. That is correct, sir.

1 Q. And this is PX 1663. Is this another Samsung document?

2 A. Yes, sir.

3 Q. And what does it say?

4 A. So here we're talking about we moved ahead to enter into
5 an agreement for technical collaboration to resolve the patent
6 risk related to LRDIMM.

7 Q. The third family you talked about is the '060 and '160
8 Patents. Is that correct?

9 A. That's correct.

10 MR. SHEASBY: Mr. Huynh, can we have slide 57,
11 please?

12 Q. (BY MR. SHEASBY) And these are the two patent families.
13 Is that correct?

14 A. The two patents in that family, yes.

15 Q. And this is JTX 5 and 6. Is that correct?

16 A. That is correct.

17 Q. So I want to show you a document. This is PX 1778. What
18 is PX 1778?

19 A. So this document is a description of the '060 Patent that
20 was provided to Samsung.

21 Q. And was the actual document provided to Samsung or was a
22 presentation given?

23 A. A presentation was given.

24 Q. And I want to show you -- so this describes the '060
25 Patent as relating to TSVs. Is that correct?

1 A. That is correct.

2 Q. And now you have to explain in detail what a TSV is.

3 A. Okay. So if we look at the screen here, what this is
4 showing is we've got DRAM die, and those DRAM die are made out
5 of silicon. And the vertical columns there are what we call
6 vias. They are basically ways to get from one layer to
7 another, and they're going through the silicon. That's the
8 'through silicon' part, and the 'via' is the path. And what
9 that is is a way to interconnect those dies together.

10 Q. And in your research at Netlist, are you now working with
11 HBMs?

12 A. Yes.

13 Q. And do you have personal knowledge of the -- I want to
14 show you another document. So this is the email that PX 1778
15 is attached to, and it says "additional slides for Samsung."
16 Is that correct?

17 A. Yes, sir.

18 Q. And was this presentation given to Samsung?

19 A. Yes, it was.

20 Q. You have personal knowledge regarding the high bandwidth
21 memory through silicon via market space?

22 A. Yes.

23 Q. What was Samsung's position in the market when they asked
24 for a presentation on your technology in April 2015?

25 A. In 2015, Samsung was behind their biggest competitor

1 SK hynix in this product space.

2 Q. And when did Samsung launch its HBM product with TSV?

3 A. When was the -- I'm drawing a blank on the date.

4 Q. It's okay. If you don't know, you should just say you
5 don't remember.

6 A. I don't remember.

7 Q. No problem at all.

8 And I'm showing you PX 446. What is this document?

9 A. This is a document in response to a request to get
10 information on our patents and what products they cover.

11 Q. And who requested this information?

12 A. This was requested by Samsung.

13 Q. And what does this page of the document show?

14 A. So this page shows that the '060 Patent is related to the
15 HBM product family.

16 Q. About how many times -- this document's from 2006. From
17 2006 through the duration of your commercial relationship with
18 Samsung, about how many meetings have you -- did you have with
19 Samsung?

20 A. We had several. I mean, I don't know--10, 20. I --
21 yeah.

22 Q. At any point in time did Samsung ever claim that its HBM
23 designs were not using your patents?

24 A. No.

25 Q. How does Netlist's design work? And specifically I want

1 to ask you -- that's an open-ended question.

2 There are three elements on this slide. There is a die
3 interconnect, a data port, and a bypass, and then there's
4 array dies on the right-hand side.

5 So first off, what's the control/master die?

6 A. So the control/master die down there at the bottom of the
7 stack is responsible for writing the data and reading the data
8 back from the array dies, which are the memory which are
9 located above it.

10 Q. And then what are die interconnects, what are data ports,
11 and what are bypasses?

12 A. Yes. So what we teach in our patent is those TSVs can go
13 through the silicon and either connect to or not connect to
14 those array dies. When they are not connected, they have
15 what's called a bypass, and when they are connected they hook
16 up to a data port.

17 Q. And what is the consequence of no data port being
18 presented at a given level?

19 A. So if the data port is not present, there is no
20 electrical communication, and also the load is greatly
21 reduced. We talked about load a little previously. It's a
22 similar concept for the HBM.

23 Q. And are there unique structures within array dies?

24 A. Yes. The ones that we were speaking of --

25 Q. Mr. Milton, let me --

1 A. I'm sorry.

2 Q. What are the unique structures within the array dies?

3 A. So the unique structures are the TSVs themselves along
4 with the data ports.

5 Q. So this is a slice -- each of these are the array dies.
6 Is that correct?

7 A. That is correct.

8 Q. And so this would be an array die. Is that correct?

9 A. That is correct.

10 Q. And what is within the array die that's unique?

11 A. So within the array die --

12 MR. McKEON: I'm going to object. Now we're
13 getting into the claim construction issues and really going
14 into expert testimony now, and we don't have a report from
15 this witness.

16 THE COURT: I know you don't have a report because
17 he's not an expert under the rules, but he's not asked -- he's
18 testifying as to what he knows. He's not offering an opinion.
19 He's not speculating.

20 I don't see a basis for your objection, counsel. I mean,
21 you've made it several times. If you can convince me that
22 he's going beyond what his personal knowledge is as the chief
23 technology officer of the Plaintiff and here as their
24 corporate representative, I'm happy to hear from it. I
25 recognize he's not a traditional expert witness, but I'm not

1 hearing expert testimony in the form of opinions or
2 speculative answers; I'm hearing him talk about what he knows.
3 And as long as he stays within his personal knowledge, I'm
4 going to allow him to testify.

5 MR. McKEON: Thank you, Your Honor. I got it.
6 Thank you.

7 THE COURT: All right. Let's continue.

8 Q. (BY MR. SHEASBY) So just so the record is clear, what
9 are the unique features in array dies?

10 A. So the unique features in the array dies are the TSVs,
11 the data ports, and the bypasses.

12 Q. What does Netlist's design enable?

13 A. So what this enables is the ability to stack more than
14 four high of these array dies.

15 Q. Are the array dies monolithic?

16 A. No, the array dies -- the base might be, but in order to
17 make them array dies, you have to add additional features like
18 the 'through silicon vias' and the microbumps that allow you
19 to connect them together.

20 Q. So by the base you mean the control die.

21 A. Correct.

22 Q. But the array dies, you're -- what did you say regarding
23 whether they are monolithic or not?

24 A. They need to be processed more than a monolithic
25 component.

1 Q. Did Netlist's research address the importance of data
2 ports?

3 A. Yes, they did. Or yes we did. Excuse me.

4 Q. I want to show you a passage from your specification.
5 This is column 6, lines 41 through 45. What does it describe?

6 A. So here we're stating the fact that you need a data port
7 in order to have electrical communication.

8 Q. Have you heard of the phrase 'keep-out zone'?

9 A. Yes, sir.

10 Q. Did Netlist contemplate keep-out zones for its
11 technology?

12 A. Yes.

13 Q. I'm showing you -- this is column 8, lines 35 through 62.
14 What does this describe?

15 A. So it's talking about that the TSV may include an
16 insulator or air gap, which is that keep-out.

17 Q. And then it goes on to talk about stubs. Do you see
18 that?

19 A. I do.

20 Q. And would there still be an electrical connection even
21 when there is no electrical communication?

22 A. Yes. There can be a connection, but, as mentioned
23 previously, the loading on the driver would be much less, but
24 there will be no electrical communication, which is actually
25 the transfer of the data.

1 Q. Why would you create a stub that had an electrical
2 connection but no electrical communication?

3 A. The reason why that's done is so that you can keep all
4 the array dies the same so you don't have to have custom ones
5 for each level of the stack.

6 Q. Did you consider using older historical technology when
7 developing your HBM technology?

8 A. Did we consider it?

9 Q. Let me withdraw that so -- it's a terrible question. I
10 withdraw the question and let me re-ask it.

11 THE COURT: Mr. Sheasby, you don't need to tell us
12 all it's a terrible question; just withdraw it and ask another
13 one.

14 Q. (BY MR. SHEASBY) Mr. Milton, I'm showing you PDX 2.69.
15 Do you recognize what this is?

16 A. Yes, sir.

17 Q. What is this?

18 A. So this is a representation of what we're calling a DRAM
19 circuit. And what you can see here is that the connections
20 are made on the sides of the package as opposed to being in
21 the silicon -- through the silicon.

22 Q. And how is this different from the technology that you
23 deployed?

24 A. So we can see here with the comparison on the left we
25 have those connections coming out of the sides externally, and

1 in the HBM stack we see the 'through silicon vias'.

2 Q. Is the internal organization of the DRAM circuits on the
3 left and the die arrays on the right different as well?

4 A. They are different.

5 Q. Can a DRAM circuit be used in place of the TSV array
6 dies?

7 MR. McKEON: Your Honor, objection.

8 THE COURT: I'll sustain that. That calls for an
9 opinion.

10 Q. (BY MR. SHEASBY) I want to show you another Passage from
11 your specification. This is column 5, lines 34 through 40.
12 What does this describe?

13 A. So this is talking about the fact that with our teachings
14 we can go from the four array dies to eight array dies, maybe
15 even 16 array dies.

16 Q. Does the patent present any techniques for dealing with
17 testing for defects in these complex products?

18 A. Yes, it does.

19 Q. I'm showing you column 17, lines 36 through 49. What
20 role does this passage relate -- play in testing, if any?

21 A. Yeah. So what this talks about is driver sizes, and we
22 teach that you can size the drivers--and that's the electrical
23 component that actually sends the signals--and you can size
24 that driver based on what it needs to do.

25 For the test mode you don't have to test it at the full

1 speed, for example, because you want to see if it has
2 connectivity. So, as a result, you can use a smaller driver,
3 and what that does for you is reduce the amount of area it
4 takes up on the die as well as reduces power.

5 Q. And I'm turning to page 4 -- column 4, lines 8 through 16
6 of your specification, and it says you incorporated by
7 reference application 12/422,915. Do you see that?

8 A. I do.

9 Q. First off what does 'incorporation by reference' mean?

10 A. So what that means, we're taking all of the words in that
11 document and essentially saying that they're in that patent
12 application.

13 Q. And what does the 12/422,925 application describe?

14 A. It talks about tests.

15 Q. Mr. Milton, after termination and before this lawsuit was
16 filed, did Samsung ever approach Netlist and seek permission
17 to use Netlist's patents?

18 A. They did not.

19 MR. SHEASBY: I pass the witness, Your Honor.

20 THE COURT: Cross examination, please.

21 MR. McKEON: May I begin, Your Honor?

22 THE COURT: Looks like your team has binders to pass
23 out.

24 MR. McKEON: Okay. Thank you.

25 THE COURT: No, Mr. Sheasby. It's Defendants' job

1 to put a binder in front of the witness on cross. Hand that
2 to the Court Security Officer, please.

3 You may approach.

4 Just keep that. The clerks don't need it.

5 Let's proceed with cross examination, Mr. McKeon.

6 CROSS EXAMINATION

7 BY MR. McKEON: ?

8 Q. Good afternoon, Mr. Milton. We haven't met. My name is
9 Mike McKeon, and I represent Samsung.

10 A. Very nice to meet you, sir.

11 Q. Nice to meet you.

12 Now, you mentioned that Netlist was founded in 2000.

13 Isn't that right?

14 A. That's correct, sir.

15 Q. And it's actually a publicly-traded company. Isn't that
16 right?

17 A. That is correct, sir.

18 Q. Got shareholders. Isn't that right?

19 A. Correct.

20 Q. And you testified about some of the products that Netlist
21 has. Do you recall that?

22 A. Yes, sir.

23 Q. Now, Netlist specializes in hybrid memory. Correct?

24 A. That's correct.

25 Q. And when Netlist uses that term 'hybrid memory', that

1 refers to memory modules that have both DRAM chips and flash
2 memory chips. Correct?

3 A. That is correct.

4 Q. And sometimes you refer to that product as an NVDIMM.
5 Correct?

6 A. That is one implementation, yes.

7 Q. It has flash memory chips and DRAM chips. Correct?

8 A. It has flash and DRAM, yes.

9 Q. And Netlist does not make or sell its own DDR4 LRDIMM.
10 Correct?

11 A. That's a correct statement. We design for DDR3.

12 Q. Netlist is now working on a low profile DDR5 product.
13 Isn't that right?

14 A. That is correct, sir.

15 Q. Is that the one you showed the jury?

16 A. Yes, sir.

17 Q. Okay. And a low profile DDR5 product is different than
18 the DDR5 DIMM products that are accused of infringement in
19 this case. Right?

20 A. It has a different form factor. That is true.

21 Q. So it's different. Correct?

22 A. In form factor, yes.

23 Q. And Netlist does not make or sell its own DDR5 RDIMM.
24 Correct?

25 A. The VLP is an RDIMM, sir.

1 Q. A DDR5 RDIMM, sir.

2 A. The VLP is a DDR5 RDIMM.

3 Q. Okay. You're talking about the one you just showed the
4 jury. Is that right, sir?

5 A. Yes, sir.

6 Q. Okay. Is that a product that's on the market today?

7 A. It's in qualification.

8 Q. So you don't sell that product today to anybody. Isn't
9 that right?

10 A. Not yet. It's in qualification.

11 Q. It's in qualification. But you weren't trying to mislead
12 the jury when you suggested that and showed them the product
13 that you were on the market for that product and selling it
14 and competing with others. Is that right?

15 A. That was not my intention.

16 Q. And Netlist does not make or sell DDR5 UDIMM. Right?

17 A. That is a correct statement.

18 Q. And you don't sell or make DDR5 SO-DIMM. Is that right?

19 A. That is a correct statement.

20 Q. So Netlist does not make or sell any of the types of DDR4
21 or DDR5 products that are accused of infringement in this
22 case. Correct?

23 A. I disagree on the RDIMM part because this is, in fact, an
24 RDIMM.

25 Q. Sir, we just established that that product's not on the

1 market.

2 A. Oh, okay. Understood. Understood.

3 Q. So listen to my question.

4 A. Yes, sir.

5 Q. Netlist today does not make or sell any of the types of
6 DDR4 or DDR5 products that are accused of infringement in this
7 case. Correct?

8 A. Okay. Correct.

9 Q. And you didn't do that at the time that the complaint was
10 filed accusing Samsung of infringement in this case. Isn't
11 that right?

12 A. I'm sorry. One more time, sir.

13 Q. You have the same answer to the question about no
14 competition at the time that Netlist filed the lawsuit against
15 Samsung in this case. Isn't that right?

16 A. The same answer about no competition?

17 Q. Correct.

18 A. I'm sorry. It must be getting late in the day. I
19 apologize. Could you answer -- one more time, sir.

20 Q. We've already established and you told the members of the
21 jury Netlist does not make or sell any of the types of DDR4 or
22 DDR5 products that are accused of infringement in this case.
23 Correct?

24 A. That's correct.

25 Q. And that was true at the time that the complaint for

1 patent infringement was filed in this case. Isn't that right?

2 A. Okay. Correct.

3 Q. And Netlist also does not make HBM products. Correct?

4 A. That is correct.

5 Q. You don't compete with Samsung in HBM products. Correct?

6 A. That is correct.

7 Q. And we know that HBM products are the products that just
8 have DRAM. Isn't that right?

9 A. HBM -- yes, that is correct.

10 Q. No flash memory. Isn't that right?

11 A. On HBM, no.

12 Q. Right. And on the products that we went through before,
13 all the DDR4 products and the DDR5 products we mentioned, no
14 flash memory chips in those products, either. Isn't that
15 right?

16 A. That's incorrect, sir.

17 Q. Is there a flash memory chip on those products, sir?

18 A. There's flash in that product.

19 Q. Listen to my question, sir. Is there a flash memory chip
20 in those products?

21 A. What do you define as a chip?

22 Q. Sir, a chip you can hold in your hand.

23 A. You can hold the PMIC, and it has flash in there that you
24 could classify as a chip.

25 Q. Are you referring to the register in a PMIC chip? Is

1 that what you're referring to?

2 A. Not the register. I'm referring to where that register
3 information gets saved in the event of a power fault
4 condition.

5 Q. But, sir, that's not saving people's emails, people's
6 videos, people's photographs. That little thing in the PMIC
7 has nothing to do with saving that. Isn't that right?

8 A. It's not saving that, but the information it's saving is
9 critical information about what happened to that module.

10 Q. Well, let's talk about -- more about the invention.
11 We're going to get back to that in a moment. Okay?

12 Now, you testified about your invention for the '918 and
13 '054. Isn't that right?

14 A. That's true.

15 Q. You agree Netlist was not the first company to create
16 memory modules. Correct?

17 A. That is correct.

18 Q. You did not invent printed circuit boards. Right?

19 A. No, we did not.

20 Q. Did not invent flash memory. Correct?

21 A. Correct.

22 Q. Did not invent DRAM. Right?

23 A. That's correct.

24 Q. And you didn't invent buck converters. Isn't that right?

25 A. That is correct.

1 Q. Didn't invent converter circuits, either. Isn't that
2 right?

3 A. No, we did not.

4 Q. Didn't invent voltage regulation. Isn't that right?

5 A. That's correct.

6 Q. Voltage regulation been around a long time in products.
7 Isn't that right?

8 A. Sure.

9 Q. Now, for Netlist's own products you talked about today,
10 Netlist does not design any of the low-level integrated
11 circuit chips. Isn't that right?

12 A. That is correct.

13 Q. And you believe that what Netlist did, in your invention
14 you took some known chips and materials and you combined them
15 in the way that you think is novel. Is that right?

16 A. Absolutely. Correct, sir.

17 Q. Now, the patents you discussed today in court, there was
18 five of them. Isn't that right?

19 A. That's correct, sir.

20 Q. But you're only a named inventor on the '918 and '054.
21 Is that right?

22 A. That is a correct statement, sir.

23 Q. And the '918 was filed in December of 2020. Isn't that
24 right?

25 A. Well, the application was filed in 2008.

1 Q. Well, the '918 patent, the application, sir, that became
2 the '918 Patent was filed in December of 2020. Correct?

3 A. Those claims were filed, but the application was from
4 2008.

5 MR. McKEON: Let's get the '918 Patent up, please.
6 And let's just see what the '918 Patent -- can we blow up
7 the -- right here.

8 Q. (BY MR. McKEON) See, sir, the '918 Patent --

9 MR. McKEON: If we can get that down a little so I
10 can see the '918 Patent number? Right there is good.

11 Q. (BY MR. McKEON) And you see, sir, that's the '918 Patent
12 you told the jury about. Isn't that right?

13 A. That is correct, sir.

14 Q. Can you tell the jury what it says there right here at
15 22?

16 A. Yes. It says filed December 30th, 2020.

17 Q. Didn't say anything there about filing this in 2008.
18 Isn't that right?

19 A. Not on that line, sir.

20 Q. Correct. That line is the filing date of the '918
21 Patent. Isn't that right?

22 A. Right. And we claim priority back to 2008.

23 Q. We're going to get to that.

24 A. Okay.

25 Q. We're going to get to that.

1 And the '054 Patent -- of course, what we have it up
2 here, issued in 2021. Isn't that right?

3 A. That is correct, sir.

4 Q. And the '054 you mentioned is a continuation of the '918.
5 Isn't that right?

6 A. I believe that is correct, yes.

7 Q. And the '054 and '918, they share the same specification.
8 Isn't that right?

9 A. That is correct; the 2008, uh-huh.

10 Q. The same figures and same disclosure. Isn't that right?

11 A. The same figure, same specs, yes.

12 Q. Okay. And you just testified that that goes back to
13 2008. Isn't that right?

14 A. That's correct, sir.

15 Q. Okay. Now, the '054 issued in January of 2022. Isn't
16 that right?

17 A. I believe that is correct.

18 Q. Okay. We can pull it up.

19 MR. McKEON: Why don't we get the '054. This isn't
20 a memory test.

21 Q. (BY MR. McKEON) You see there January of 2022. Isn't
22 that right?

23 A. Yes, sir. Yes, sir.

24 Q. Okay. And that was just last year. Right?

25 A. That is correct.

1 Q. And did you know, sir, that when Samsung was initially
2 sued, the '054 Patent wasn't even in the complaint that was
3 filed?

4 A. Did I know that? I don't know that I knew that.

5 Q. This was actually added -- after the Patent Office issued
6 this, an amendment was made to the complaint and it was added
7 to the complaint. Did you know that?

8 A. I did not, but okay.

9 Q. Now, your understanding of the invention of the '918
10 Patent is you put voltage regulators on memory modules.
11 Correct?

12 A. That is correct.

13 THE COURT: Mr. McKeon, would you slow down?

14 MR. McKEON: Sorry, Your Honor.

15 THE COURT: Well, just slow down. Don't apologize;
16 just slow down.

17 Q. (BY MR. McKEON) And for the '054 Patent, you understand
18 -- your understanding is that your invention is to trigger
19 signals detected from voltages exceeding or going below a
20 threshold and writing data to non-volatile memory in response
21 to those trigger signals. Correct?

22 A. Yes, sir.

23 Q. And you agree that one of the main focuses of the
24 patents, these two patents, is a memory module that has both
25 flash memory chips and DRAM memory chips. Isn't that right?

1 A. I agree that it is a focus of that patent, but there are
2 several inventions embodied in that application.

3 Q. Let's talk about that.

4 MR. McKEON: Can we get the '918 Patent back up?

5 Q. (BY MR. McKEON) Now, I wrote this down and I wanted to
6 make sure I got it right. When you were talking to
7 Mr. Sheasby about your '918 Patent, you had indicated to him
8 that, Oh, yes, this is the patent for intelligent on-module
9 power management. Did I say that right?

10 A. Yes, sir.

11 Q. And, sir, what is the title of this patent?

12 A. The title of the patent is "Flash-DRAM Hybrid Memory
13 Module."

14 Q. So the title of the patent--right?--that you chose when
15 you filed it with the Patent Office, the title you gave it is
16 "Flash-DRAM Hybrid Memory Module." You didn't give it
17 'intelligent on-module power management'. Correct?

18 A. That's correct. But --

19 Q. Sir, if you'll just answer my question because I don't
20 have a lot of time. All right.

21 THE COURT: Mr. McKeon, if you think the witness is
22 non-responsive, don't instruct the witness; you raise it with
23 me and I'll deal with whether the witness is non-responsive or
24 not. Okay?

25 MR. McKEON: Thank you, Your Honor. Appreciate

1 that.

2 Q. (BY MR. McKEON) So you had the option, you could have --
3 right? When you filed this in the Patent Office, you could
4 have filed it and called it 'intelligent on-module power
5 management'. You could have done that. Isn't that right?

6 A. We could have, but we believe -- we believe that at DDR5
7 all modules are now hybrid modules.

8 MR. McKEON: Your Honor, I move to strike that last
9 clause and have you instruct the witness to have him focus on
10 my question.

11 THE COURT: I'll sustain the objection, if it's
12 non-responsive, after the witness said, "We could have."
13 That's responsive to the question. But when he says, "We
14 believe," and he goes on for an explanation, you didn't ask
15 for the explanation.

16 So again, limit your answers to the questions called for.
17 Mr. Sheasby's going to get a chance to follow up with
18 additional questions in any area he thinks is necessary.
19 But you need to limit your answers to the questions offered
20 by counsel. Okay?

21 THE WITNESS: Thank you, sir -- Your Honor.

22 THE COURT: Let's continue, Mr. McKeon.

23 MR. McKEON: Thank you, Your Honor.

24 THE COURT: I'll strike everything after the
25 responsive answer.

1 MR. McKEON: Thank you, Your Honor.

2 And if we can go down a little in the first page of the
3 patent.

4 Q. (BY MR. McKEON) On the first page of this
5 patent--right?--there's a figure on it, and that's a real
6 important figure because it's right on the first page. Is
7 that right?

8 A. It's on the first page, yes.

9 Q. And this is a memory module, sir, that has NAND flash
10 chips and DRAM flash chips. Is that right?

11 A. Yes, it does.

12 Q. And there's nothing in this figure that says or that's
13 titled or saying 'intelligent on-module power management'.
14 Isn't that right?

15 A. There's nothing in this figure that says that. Correct.

16 Q. And just so we're clear, the NAND is here on the left and
17 the DRAM there is on the right at the top, those boxes. Isn't
18 that right?

19 A. That is a correct statement.

20 Q. And the idea behind -- that was disclosed in this patent
21 is that if the power goes out such that the DRAM is no longer
22 powered, then the system here that you designed and disclosed
23 in this patent would react to put the data from the DRAM into
24 the permanent flash. Isn't that what's going on in your
25 invention here?

1 A. That's part of it, but there is more in our application
2 than that.

3 Q. But when we talk about the hybrid memory--right?--what
4 we're talking about is a system that does what I just
5 described. Isn't that right?

6 A. Correct.

7 Q. And so you need both types. You need the NAND flash
8 memory and the DRAM to accomplish that. Isn't that right?

9 A. Well, that's not entirely correct, because in our patent
10 we actually do talk about applications where the flash is
11 somewhere else in the system.

12 Q. Okay. But what we do know is in this figure, and figures
13 we're going to talk about in a minute, here you see the NAND
14 flash chips there. Right?

15 A. I do.

16 Q. That's what you showed in your figure. Is that right?

17 A. That is a correct statement.

18 Q. And we also know the voltage regulator, the power module
19 that you call in this patent, that was used to accomplish this
20 task of if the power goes out in the DRAM, I'm going to
21 quickly go over to the NAND flash. That was what the voltage
22 regulator of your patent was for. Correct?

23 A. And it's now being used on DDR5. Yes.

24 Q. Sir, I'm going to move to strike that answer.

25 MR. McKEON: Your Honor, may I strike that?

1 THE COURT: Well, you may ask me if you can strike
2 it. Don't tell him.

3 MR. McKEON: Your Honor, may I strike --

4 THE COURT: What's the basis for your motion?

5 MR. McKEON: That was not my question and the
6 witness is not answering my question.

7 THE COURT: Well, the answer was, "And it's now
8 being used for DDR5. Yes." The 'yes' is responsive. I'll
9 strike the preceding portion that's non-responsive.

10 Let's proceed.

11 MR. McKEON: Thank you, Your Honor.

12 Q. (BY MR. McKEON) And now let's look at some of the other
13 figures in your patent, figure 3A. Okay? We see --

14 MR. McKEON: Can I just have the whole page for now?
15 Thank you Mr. Sayer.

16 Q. (BY MR. McKEON) Of course, the figure 1 is the prior
17 art. Isn't that right, sir?

18 A. That is correct.

19 Q. And you didn't invent the concept of moving data between
20 DRAM and non-volatile memory. Isn't that right?

21 A. That's correct.

22 Q. The concept you invented was putting that all on one
23 module. Is that right?

24 A. Correct.

25 Q. And in figure 3A below we, in fact, see that. We see a

1 flash memory chip on the right and a DRAM on the left, and
2 they're all in one module. Isn't that right, sir?

3 A. That is what 3A shows, yes.

4 Q. And we see that in 4B as well, don't we, sir? Do you see
5 that there? 4B you have the DRAM on the left and the flash
6 memory on the right that's all in one module. Isn't that
7 right?

8 A. That is correct.

9 Q. And we continue on. We've got figure 3B and 4B here.

10 MR. McKEON: And we don't need to highlight them,
11 Mr. Sayer.

12 Q. (BY MR. McKEON) But do you see the DRAM on the left and
13 flash on the right, in both of these figures they're both on
14 the module. Isn't that right?

15 A. In those figures that is correct.

16 Q. And that's the invention--the hybrid memory invention,
17 the NVDIMM invention. Correct?

18 A. Yes. It has the flash and the DRAM, yes.

19 Q. And we see that in figure 5B as well. Right? We see the
20 DRAM and the flash there.

21 MR. McKEON: And actually let's go to 5A first.

22 Q. (BY MR. McKEON) You see 5A, and you see the DRAM and the
23 flash there. Isn't that right, sir?

24 A. Yes, sir.

25 Q. Okay. And then, again, it's all on the same module.

1 Isn't that right?

2 A. Yes, sir.

3 Q. Okay. And then let's just do a couple of more and we can
4 move on.

5 MR. McKEON: Figure 7 and 8A. Let's go to the next
6 page.

7 Q. (BY MR. McKEON) And we see, again, figure 7 and figure
8 8A you got the DRAM and the flash memory chips. They're all
9 on the module. Isn't that right?

10 A. Yes, sir.

11 Q. And then, finally, in a figure I believe you talked about
12 in your direct, figure 16, and this is the power module that
13 you referred to in your direct. Isn't that right?

14 A. That is correct.

15 Q. All right. And this is part of the -- what you claim
16 your invention is. Isn't that right?

17 A. That is correct.

18 Q. And in this particular power module that you have here on
19 the right-hand side, it shows you where the voltages are
20 going. Isn't that right?

21 A. That's correct.

22 Q. And, for example, we see we got DRAM and we got flash are
23 two of the chips where the voltage is going. Isn't that
24 right?

25 A. That is a correct statement.

1 Q. And, in fact, it says 'to NVDIMM' there right in the
2 figure. Is that right?

3 A. That's what it says in the figure.

4 Q. And the NVDIMM is the hybrid memory that we talked about
5 with the DRAM and the flash. Correct?

6 A. That's correct.

7 Q. All right. And let's just go to column 1. And right
8 here in column 1 we see at the top the flash -- you got,
9 again, the description of the invention here. What you have
10 is "Flash-DRAM Hybrid Memory Module." Isn't that right?

11 A. Yes, I see that.

12 Q. Okay. And then now the technical field, which goes down
13 -- the bottom of 1 and the top of 2, and we can just read it
14 together: "The present disclosure relates generally to
15 computer memory devices and, more particularly, to devices
16 that employ different types of memory devices such as
17 combinations of flash and random access memories."

18 Do you see that?

19 A. I see that.

20 Q. So the technical field that you describe in the patent
21 that the public -- when they get this patent and they see,
22 they look at the technical field and they see the combination
23 of flash and DRAM. Isn't that right?

24 A. That's what it shows on this page.

25 Q. All right. And if you go through more of the figures and

1 the description--we're not going to do that here; the jury's
2 going to have this patent in the jury room in the end of the
3 case--if you go through it, it describes column after column
4 this concept of having the hybrid DRAM and flash memory.
5 Isn't that right?

6 A. I think that's incorrect. Every column has that.

7 Q. Okay. But the vast proportion of this specification is
8 directed to that invention. Isn't that right?

9 A. I guess I have to agree with that, yeah.

10 Q. And, in fact, a key thing in the NVDIMM is the module has
11 to work with when the system is not providing any power.
12 Isn't that right?

13 A. That is disclosed in our application. That's that send
14 mode.

15 Q. Okay. Now, I want to talk about the timeline a little
16 here.

17 MR. McKEON: And if I can get the '918 Patent cover
18 up with the filing data and the related data that's on page 2.

19 Q. (BY MR. McKEON) And you provided some testimony in your
20 direct and I have a few follow-ups on that. All right?

21 So you see on the left here you have the continuation
22 here that's identified is the '918 Patent application; that
23 was filed in December of 2020, is a continuation of the
24 application ending in '416. Do you see that?

25 A. Yes, sir.

1 Q. Okay. And that was filed in 2018. Isn't that right?

2 A. That's what it says, yes.

3 Q. Okay. And then, as you have already said today, this
4 kind of goes all the way back down the chain, if you will,
5 down to June 2nd of 2008. Isn't that right?

6 A. That is correct.

7 Q. Okay. So you have the earliest in 2008 and then you got
8 the '918, and you can kind of look at the 2008 filing, that
9 earliest application, you can kind of look at that as the
10 great-great-great-grandfather of the '918, or grandmother of
11 '918. Is that right?

12 A. That's a fair assessment.

13 Q. And we know that the patent application you filed in
14 2008, that described the flash-DRAM hybrid memory that we've
15 been talking about today. Is that right?

16 A. In addition to other things, yes.

17 Q. And a lot of time elapsed. In fact, you agree that over
18 12 years elapsed between when you had that original filing and
19 when we had the '918 Patent filed with the Patent Office in
20 2020. Isn't that right?

21 A. That is correct.

22 Q. Now, if we look at the history here, you agree with me
23 that the claims of every -- each of these patents here that
24 have issued, the '833 -- you see the '831 there?

25 A. Uh-huh. Yes, sir.

1 Q. You got the '684. You got the '186. Do you see that?

2 A. I do, sir.

3 Q. You understand, sir, these are your patents. Right?

4 A. Yes, sir.

5 Q. And you understand that the claims -- the claims in every
6 single one of those patents are claims that require flash
7 memory and DRAM. You understand that. Right?

8 A. I have to tell you, I didn't review all of the claims
9 from all of the patents.

10 Q. So you don't know one way or the other?

11 A. Yeah. I have to say I don't know. I didn't read all of
12 the claims again from those patents.

13 Q. Okay. Well, we looked at them, and I can represent to
14 you that's, in fact, the case.

15 So let me ask you this question. Is it your view that
16 the first --

17 THE COURT: Just a minute.

18 MR. SHEASBY: Your Honor, I object to the colloquy.

19 THE COURT: Well, if you're objecting to counsel's
20 sidebar where he tells the jury what he's looked at and what
21 he thinks, I'm going to sustain that objection. He's not here
22 to testify; the witness is.

23 MR. SHEASBY: Thank you, Your Honor.

24 MR. McKEON: Thank you, Your Honor.

25 THE COURT: Let's proceed.

1 MR. McKEON: Thank you, Your Honor.

2 Q. (BY MR. McKEON) Is it your understanding, sir, that the
3 first time in this chain since 2008 that Netlist obtained a
4 patent related to this specification, that contained a claim
5 that did not have both DRAM and flash was the '918 Patent. It
6 was the first time. Isn't that right?

7 A. Again, I -- I didn't review all those claims so --

8 Q. Okay. All right. Well, we can move on.

9 Now. One thing we know is that the jury understands now
10 already in this case, after a day -- being here for a day,
11 that the claims in these patents are a big deal. And you
12 agree with that. Isn't that right?

13 A. Yes, sir.

14 Q. In fact, that kind of defines the scope of the invention.
15 The Judge is going to instruct the jury on that. Right?

16 A. Well, actually I'm sorry. You said that the claims are
17 the big deal. It's the application is what the big deal is,
18 because we can continue to write new claims off of the
19 application because of the fact the application has all the
20 inventions in it. So I misspoke previously.

21 Q. Okay. So you don't have an understanding of what the --
22 the importance or non-importance of claims in patents. Is
23 that right?

24 A. No, no, I have a very good understanding of that.

25 What I'm saying is that the claims of any individual patent

1 are -- you know, you can -- you know, as we've seen, we're
2 filing claims on part of the invention that the PTO told us
3 had separate utility, so we're filing claims specifically on
4 that power management.

5 Q. Sir, you cannot comment on claims or claim language in
6 the patents. Correct?

7 A. That's -- I'm not an expert in that area. That's a true
8 statement. But the concept of having an application that has
9 multiple inventions, I can comment on that.

10 MR. McKEON: Your Honor, move to strike the last
11 clause.

12 THE COURT: Overruled.

13 MR. McKEON: All right.

14 THE COURT: Approach the bench, counsel.

15 MR. McKEON: Thank you.

16 (The following was had outside the hearing of the
17 jury.)

18 THE COURT: How much more cross do you think you
19 have?

20 MR. McKEON: I mean, I'm going hopefully another 30
21 minutes, Your Honor.

22 THE COURT: Then you're going to have some redirect?

23 MR. SHEASBY: Very short, Your Honor.

24 THE COURT: I have to stop at 5:30 today. So he's
25 our corporate rep for the Plaintiff; he'll be here all week.

1 We'll have to pick up with him Monday morning.

2 MR. McKEON: Okay, Your Honor.

3 THE COURT: I want to talk with you about deposition
4 designation disputes, but I'll talk with you after the jury
5 leaves.

6 MR. McKEON: Thank you, Your Honor.

7 (The following was had in the presence and hearing
8 of the jury.)

9 THE COURT: Ladies and gentlemen, this witness is
10 going to be on the stand for some additional time, and I'm not
11 unaware it's a Friday afternoon and you've been here all day.
12 So even though I told you we might go to 6:00, we're going to
13 stop at 5:30 today and we're going to pick back up with this
14 witness on Monday. He'll continue the cross examination by
15 the Defendant, and then if the Plaintiff has redirect
16 examination we'll take that up.

17 Let me remind you of all the instructions I've given you,
18 including, first and foremost, don't communicate with anybody
19 about this case. And I can just promise you, unless you live
20 alone, you're going to get a question when you walk through
21 the door. Be prepared for it. Don't answer it.

22 If you will take your notebooks as you leave the
23 courtroom with you to the jury room and leave them closed on
24 the table there so that they'll be waiting for you on Monday.
25 Please plan your travel so that we can plan to start at 8:30

1 Monday morning. Have a good weekend. Be careful driving back
2 and forth.

3 And with those instructions the jury's excused until
4 Monday.

5 (Whereupon, the jury left the courtroom.)

6 THE COURT: Be seated, please.

7 Counsel, including the time that the Court withdrew from
8 both sides, for reasons I've previously stated in the record,
9 there's been a total of 2 hours and 22 minutes of trial time
10 used today with the Plaintiff having a remaining 11 hours and
11 7 minutes and the Defendant having remaining 11 hours and 31
12 minutes.

13 I want to meet with lead and local counsel in chambers
14 after we recess for the weekend. You've previously submitted
15 a multitude of disputes regarding deposition witnesses who are
16 set to testify after Mr. Milton completes his testimony.
17 We've not had any opportunity to go over those. I want to
18 give you at least guidance on the amount I've already covered.
19 I will review the rest of your designations over the weekend
20 and try to give you guidance before we begin Monday morning.

21 Let me just say that I expect a different approach to
22 the meet and confer process from both sides. This has been
23 a trial that's exceeded not only the norms but it's exceeded
24 what's reasonable as far as the level and the degree of
25 disputes. The--I don't know another way to say it--the

1 pettiness of disputes of things that really make no difference
2 but clog the system and the volume of what you've given me
3 makes it impossible for me to respond to you in a way that
4 keeps this case moving. That's why we spent an extra hour of
5 time today in the middle of the day that I held you
6 accountable for, and I don't think you want to continue that.
7 So I'm expecting a better level of conduct and a better level
8 of efficiency and professionalism in the meet and confer
9 process between now and Monday.

10 With that, we're going to stand in recess until Monday
11 morning.

12 Let me see lead and local counsel in chambers, please.

13 The Court stands in recess.

14 (The proceedings were concluded at 5:30 p.m.)
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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts 04/14/2023

10 _____ DATE _____
11 SHAWN McROBERTS, RMR, CRR
12 FEDERAL OFFICIAL COURT REPORTER
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Shawn M. McRoberts, RMR, CRR
Federal Official Court Reporter